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„The European Court of Human Rights in  
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judgments“

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## **List of acronyms**

CIS – Commonwealth of Independent States

CoE – Council of Europe

CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

ECHR, the Convention – European Convention on Human Rights

ECtHR, the Court – European Court of Human Rights

EU – European Union

EUBAM – European Union Border Assistance Mission

ICJ – International Court of Justice

ICRC – International Committee of the Red Cross

JCC – Joint Control Commission

MRT – Moldavian Republic of Transnistria

MASSR – Moldavian Autonomous Soviet Socialist Republic

MSSR – Moldavian Soviet Socialist Republic

OSCE – Organization for Security and Co-operation in Europe

PACE – Parliamentary Assembly of the Council of Europe

ROG – Russian Operational Group in the Transnistrian Region of Moldova [former 14<sup>th</sup> Army]

TRNC – Turkish Republic of Northern Cyprus

UN – United Nations

USSR – Union of Soviet Socialist Republics





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<sup>1</sup>Figure A. Map of Transnistria. The territory in yellow is controlled by the MRT (<https://upload.wikimedia.org/wikipedia/commons/8/8a/Naddniestrze.png>, accessed 5 June 2020)

## 1. PRESENTATION AND OBJECTIVES

The Moldavian Republic of Transnistria (MRT)<sup>2</sup> is a State of limited recognition essentially located at the left bank of the river Dniester, within the internationally recognised frontiers of the Republic of Moldova. Transnistria declared independence shortly before the fall of the Union of Soviet Socialist Republics (USSR). The newly independent Moldova tried to regain control during an armed conflict between 1990 and 1992. The separatist forces were able to resist with the support of the 14<sup>th</sup> army of the USSR, which never left the territory. This army would be integrated in the armed forces of the Russian Federation. Although Russia does not recognise the MRT, there is a close political and economic relation between both territories<sup>3</sup>. The Organization for the Security and Cooperation in Europe (OSCE) is present on the field. The European Union (EU) has also taken part in dialogues.

This master thesis focuses on the interactions between the MRT and the third pan-European international organisation, the Council of Europe (CoE), and more specifically with the European Court of Human Rights (ECtHR, 'the Court') of Strasbourg, which has been issuing judgments and decisions on events that took place within the boundaries of the MRT for the last 16 years<sup>4</sup>. In these cases both Moldova and Russia are respondent States, as Moldova is bound by the European Convention on Human Rights (ECHR, 'the Convention') in all its territory, included Transnistria, and the Court has considered that Russia has effective control over this territory, triggering its extra-territorial jurisdiction. Through the thesis, the reasoning employed by the Court to reach this conclusion will be referred as the 'Transnistria doctrine' or 'MRT doctrine' (and therefore, the cases where it is employed will be the 'Transnistria saga' or the 'MRT saga'). The authorities of the

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<sup>2</sup> The name can be found with varied spellings such as Transdnistria or Transdnier. The documents of the regime use Pridnestrovian Moldavian Republic as the official translation. This master thesis uses the denomination employed by the European Court of Human Rights in its judgments.

<sup>3</sup> For detailed information on the connections between Russia and the MRT, see European Court of Human Rights, *Ilașcu and Others v. Moldova and Russia* [GC], no. 48787/99, 8 July 2004, para. 111-161; K. Cașu, 'An aided economy. The characteristics of the Transnistrian economic model', *OSW Commentary*, vol. 1, no. 108, 2013 (accessed 26 June 2020); OSCE: 'Transnistrian Conflict: origins and issues'. Background information paper issued by the OSCE Conflict Prevention Centre, 10 June 1994. <https://www.osce.org/files/f/documents/4/3/42308.pdf> (accessed 10 June 2020); or Sections 4.1.C and 6.3.B of this master thesis.

<sup>4</sup> For a detailed list, see Figure B.

MRT do not take part in the proceedings. The aim of the thesis is to analyse the real impact of these judgments.

While there is, generally speaking, no proper implementation of the judgments by State authorities<sup>5</sup>, both Moldova and Russia are theoretically obliged to do so, and even the MRT authorities, in the context of negotiations with international actors, cannot completely disregard an authority of such global renown<sup>6</sup> as the European Court of Human Rights. In this context the thesis will develop in Section 3 its working definitions of 'execution', 'compliance' and 'impact' to describe the effects of the proceedings, as well as the possibilities to bring territories to compliance with the Convention through means other than the judgments of the Court.

To analyse the effect of the judgments the thesis will examine the actions taken by Moldova and Russia to enforce them and the actions taken by the MRT to stop the violations or prevent reiteration. The main source are the documents written or received by the Council of Europe itself, but they must be read under the light of facts not reflected in the text. In particular, they must be interpreted in the broader context of all the actors present.

To deal with the elements just mentioned, Sections 4 will include a brief description of the history of the conflict, with special reference to the actors present in the negotiations, followed by the current state of events in the territories controlled by the Republic of Moldova and the MRT.

The next section is an analysis of the evolution of the ECtHR's doctrine regarding Transnistria, grouping cases thematically and studying the connections among them. In this chapter, the legal reasoning of the Court, not only regarding Transnistria but also other non-recognised States such as Northern Cyprus or South Ossetia, is explained as much as it is required to study the setbacks and problems of the implementation, although the topic of this thesis is not the contribution of the ECtHR to international law, and

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<sup>5</sup> See Section 6 of the thesis.

<sup>6</sup> About the global reach of the Court, see, e.g., C. Hillebrecht, 'The Power of Human Rights Tribunals: Compliance with the European Court of Human Rights and Domestic Policy Change' *European Journal of International Relations*, vol. 20, no. 4, 2014, p. 1106.

therefore other legal sources that are featured extensively in the literature but have no real impact on the relation between the MRT and the ECtHR (e.g. the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts) will not be discussed.

The sixth section is an analysis of the implementation by Moldova, Russia and the MRT. The aim of the master thesis, unlike most of the literature, is not to discuss whether the Court was *right* in its judgments, nor whether its approach is *fair*, but whether these judgments are *effective*, according to the criteria established in the theoretical framework. This approach has two main consequences: first, some elements that are object of much debate, such as the military actions undertaken during the conflict or lengthy descriptions of the exact conditions of the prisons, will not be analysed here; and second, the discussion on the approach of the Court has to do only with its capacity to reach impact in the MRT – whether the reasoning on jurisdiction is the most appropriate under the Convention and international law is out of the scope. Finally, some critical reflections on the topic, pondering different options to solve the problems of implementation, will be offered.

Given the little information available on the dialogue between Transnistria and the ECtHR, this thesis does not have much to offer in terms of new information. Instead, it hopes to bring attention to points that are public but have been overlooked. As the literature review will prove, scholars have understandably studied the Grand Chamber cases and the problem of establishing the jurisdiction of the Russian Federation under article 1 of the Convention. Therefore the analysis of smaller cases is a pioneer initiative in offering a comprehensive view of the corpus established by the Court and its difficulties to have effects on Transnistria.

Finally, this master thesis does not take a position on the legitimacy of the Transnistrian cause, and no judgement of this kind shall be inferred from the wording used. The MRT institutions are mentioned between commas when the source does so or when there is no clear disambiguation in the context to differentiate them from the Moldovan institutions. For the same reasons, the territory effectively controlled by the Republic of Moldova might be mentioned as 'constitutional Moldova' or 'Moldova-proper' to avoid confusions

with the whole territory recognised the Republic of Moldova by the international community.

## 2. LITERATURE REVIEW

The arrival of the Transnistrian conflict to Strasbourg has attracted attention from scholars. It is not, however, the main subject of monographs. Among the articles written on the communication between Strasbourg and Tiraspol we can distinguish two groups: legal analyses that take certain elements of the Grand Chamber judgments as a manifestation of the Court's doctrine on a specific point, and more holistic approaches that try to offer a complete description of the interactions between the MRT and the Court. This thesis could be placed within the second group.

Legal scholars tend to focus only on the issue of jurisdiction under Article 1 of the Convention. Very rarely Transnistria is the sole object of the article, and in these cases it is just a brief commentary on case-law<sup>7</sup>. Normally it is a comparison to other cases analysed by the Court, the scope depending on the central element of the text. If this point is the self-proclaimed States of limited recognition, the overarching example of Northern Cyprus is presented as the model, followed by the variations in Moldova and Georgia<sup>8</sup>. If the author is examining the nature of the broader field of extra-territorial jurisdiction, other examples are added, most notably NATO's intervention in the Balkans<sup>9</sup>, but also the Soviet occupation of the Baltic States<sup>10</sup> or Saarland joining the Convention before

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<sup>7</sup> R. Lemaître, 'Transnistria before the European Court of Human Rights', *International Law FORUM du droit international (continued in International Community Law Review)*, vol. 6, no. 3-4, 2004, p. 111-115; S. Galani, 'Case and comment: selected decisions from the European Court of Human Rights from July to August 2016', *European Human Rights Law Review*, no. 6, 2016, p. 681-704.

<sup>8</sup> P. M. Kempees, 'Hard Power' and the European Convention of Human Rights. Doctoral thesis, Universiteit Leiden, 2019; A. Kurtskhalia, 'The Role Of The Jurisprudence Of The European Court Of Human Rights In Resolving Cases Concerning Separatist Regimes In The Republic Of Moldova And Georgia'. *Anuarul Laboratorului Pentru Analiza Conflictului Transnistrean*, vol. 3, no. 1, 2019, pp. 71-88.

<sup>9</sup> N. Mole, 'European Human Rights law in national and international practice: common experiences and differences', in Netherlands Ministry of Foreign Affairs (ed.), *Report on the seminar 'Implementation of Human Rights: the efficiency of justice in the Council of Europe and its member states'*, The Hague, 19-20 April 2004, Leiden, NJCM, 2004, pp. 69-95

<sup>10</sup> A. Lagerwall, 'The duty not to recognise unlawful territorial situations and the European Court of Human Rights', in C. Binder and K. Lachmayer (eds.), *The European Court of Human Rights and Public International Law: fragmentation or unity?*, Baden-Baden, Wien: Facultas and Nomos, 2014, pp. 11-39.

Germany as a non-State entity<sup>11</sup>. In these cases, the variety of the comparisons shows that the authors identify a 'Transnistria doctrine' of the ECtHR, which is a manifestation of its case-law on extra-territorial jurisdiction in a particular setting. It is treated as homogeneous and there is no need to mention other cases besides those of the Grand Chamber.

There are two sources that differ slightly from the model. One of the most complete approaches to the problem is the master thesis registered last year by Carchilan at Lund University. A whole section is devoted to analyse the case-law of the ECtHR regarding Transnistria<sup>12</sup>. The author does not only use the Grand Chamber cases and notices that the attribution of responsibility to Russia and discharge of Moldova is not an automatic mechanism, as well as the evolution over time of the attitude of both States, although she only uses *Pocasovschi and Mihaila*<sup>13</sup> to establish the conditions under which conditions the jurisdiction of one State or the other is accepted by the Court.

Then there is another exception where the interest is not on Article 1: Poalelungi's 2019 article. Instead of debating the jurisdiction, the former ECtHR judge analyses the positive obligation under the Convention to recognise judgments issued by illegal authorities, and the MRT in particular. Ironically, he mostly draws on case-law referred to Turkey and Cyprus, not only in Strasbourg but also in the UK<sup>14</sup>.

All in all, these authors see in the MRT saga a specific manifestation of one of the ECtHR's most famous adages: that '[t]he Convention is intended to guarantee not rights

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<sup>11</sup> A. Cullen and S. Wheatley, 'The human rights of individuals in de facto regimes under the European Convention of Human Rights', *Human Rights Law Review*, vol. 13, no. 4, 2013, pp. 691-728.

<sup>12</sup> L. Carchilan, The extraterritorial application of the European Convention on Human Rights and the United Nations Convention against Torture in frozen conflict regions as a tool of ensuring the prohibition of torture — the cases of Transnistria and Abkhazia. Master Thesis, Lund University, 2019. Pp. 38-43 <http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=8984503&fileId=8984504> (accessed 23 June 2020)

<sup>13</sup> European Court of Human Rights, *Pocasovschi and Mihaila v. Moldova and Russia*, no. 1089/09, 29 May 2018

<sup>14</sup> M. Poalelungi, 'The Namibia exception and the positive obligation of the Republic of Moldova to recognise certain judicial decisions delivered by the courts of the unrecognised regime of Transnistria', in L.-A. Sicilianos, R. Chenal, I. Motoc, R. Spano (eds.), *Regards croisés sur la protection nationale et internationale des droits de l'homme / Intersecting views on national and international human rights protections. Liber amicorum Guido Raimondi*. Tiburg, Wolf Legal Publishers, 2019. Pp. 755-757.

that are theoretical or illusory but rights that are practical and effective'<sup>15</sup>. The focus is on the Court's reasoning and not on the consequences in Transnistria. For example, no document of the Department for the Execution of Judgments is ever mentioned. Another proof that Transnistria has not received enough attention from scholars is the fact that only one of the studies referred only to Transnistria and not to a larger series of self-proclaimed authorities / States acting extraterritorially /post-Soviet States... and it is a commentary written on a judgment after it was published.

On the other hand, there is one source that follows a completely different approach, a very complete report that directly addresses the problem of implementation. The Moldovan NGO Promo-Lex, whose lawyers have represented several of the applicants before the Court of Strasbourg, produced in 2018 a report on the non-execution of the Transnistrian judgments in the context of the 'International Conference on Enforcement of ECHR Judgments in Transnistrian' cases on 19 February of the same year. The Court issued many judgments on Transnistria in 2019 and 2020 that the text cannot take into account, but its main findings are still valid. After discussing the problem of jurisdiction and going through the cases available in that moment, the report explains the reasons of the non-execution, in the author's view<sup>16</sup>:

- The incapacity of the Committee of Ministers to go beyond the wording of the judgments

- The difficulties of the inquiries to establish the facts.

- The focus on who (which State is responsible) instead of what (the necessary measures)

- The lack of interlocutors to develop solutions (in direct contrast with the situation in Cyprus)

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<sup>15</sup> European Court of Human Rights, *Airey v. Ireland*, no. 6289/73, 9 October 1979, para. 24

<sup>16</sup> L. Apostol, *STUDY. Non-enforcement of the European Court of Human Rights judgments in the cases originating from the Transnistrian region of the Republic of Moldova*, Chişinău, Promo-Lex, 2018, pp. 37-41. Available on <https://promolex.md/wp-content/uploads/2018/08/Studiu-Neexecutarea-hot-CEDO-ingleza-web.pdf> (accessed 25 June 2020)

-The underlying assumption that there is one problem that needs one solution. Instead, the report proposes a division in clusters by violated right to propose specific solutions. These could be grouped in absolute rights, freedoms and guarantees.

The purpose of this thesis is to analyse the impact of the different judgments and the level of compliance obtained by the Committee of Ministers. In line with the last recommendation of Promo-Lex, and unlike most of the literature that has studied the problem, I consider that the Transnistrian saga requires the study of the specific circumstances of the different cases and the reality on the field, well beyond the problem of jurisdiction.

### **3. THEORETICAL FRAMEWORK**

This section provides the concepts and tools needed to analyse the documents and reach conclusions. Although the thesis focuses on the actions of the ECtHR as a court of justice and the effects of its judgments, it must be borne in mind that the ECHR is not only a legal charter to be complied with as a national law, but also a Human Rights treaty that can produce effects on the international community through other means. This needs to be analysed when considering possible causes of human rights compliance (or the lack of it), and will therefore be briefly explained in a first sub-section before defining the effects of the judgments and how to measure them.

#### **3.1. The effectiveness of Human Rights treaties**

First of all, the Convention is a treaty. The level of development it has reached as a legal norm must not overshadow its political role in inter-State relations. For the sake of this section the MRT, a self-proclaimed regime and aspiring State, has to be treated as a fully-fledged State, in the sense that its position, inner working and relation to treaties is similar to that of recognised States.

The Council of Europe, of which the ECtHR is part, is an international organisation with (among others) the objective of improving human rights standards in the territory of its Member States. Actions directed at influencing the human rights record of a State use to

some degree a combination of three strategies, according to Goodman and Jinks<sup>17</sup>: material inducement, persuasion and acculturation, the difference between the latter two being that acculturation 'induces behavioral changes not only by changing the target actor's incentive structure or mind but also by changing the actor's social environment'<sup>18</sup>. Although the judgments by the European Court of Human Rights (being legally binding for the State under international law) are almost a textbook example of material inducement, their position in the larger context of the Council of Europe creates fora for the other two options. However, the authorities of the MRT are completely excluded from any possibility for dialogue except the peace talks. It is proven that isolation and lack of access to human rights-oriented international organisations results in poorer human rights records<sup>19</sup>. Nonetheless, even in these circumstances, the Convention's undeniable prominence as 'one of the most remarkable phenomena in the history of international law, perhaps in the history of all law'<sup>20</sup>, can create an environment where the Transnistrian leadership might find useful to be seen as compliant with the ECHR<sup>21</sup>. The geopolitical conflict itself is actually of little importance here, given that both Russia and Moldova are members of the Council of Europe and bound by the Convention; as are other actors such as Romania and Ukraine. The dissemination of human rights practices works when the subject attaches value to the judgment of a 'reference group'<sup>22</sup>, and any prospective future of Transnistria as a viable State goes through the ratification of the ECHR.

Logically, the next question is what degree of effectiveness one can expect from ratification of human rights treaties. Freeman has summarised the findings of different authors<sup>23</sup>: while ratification has a positive effect on democratic States with strong civil society and independent judiciary, ratification by systematic violators has a negative

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<sup>17</sup> R. Goodman and D. Jinks, *Socializing States: Promoting Human Rights through International Law*, Oxford, Oxford University Press, 2013, p.2.

<sup>18</sup> R. Goodman and D. Jinks, 'How to Influence States: Socialization and International Human Rights Law', *Duke Law Journal*, Vol. 54, No. 3, 2004, p. 638.

<sup>19</sup> Goodman and Jinks, 2013, pp. 102-103.

<sup>20</sup> M. O'Boyle, 'On Reforming the Operation of the European Court of Human Rights', *European Human Rights Law Review*, vol. 8, no. 1, 2008, p. 1.

<sup>21</sup> See an example of how the 'prominence' of the ECtHR affected the discussion of rights in the UK in Hillebrecht, p. 1106.

<sup>22</sup> Goodman and Jinks, 2013, p. 119.

<sup>23</sup> M. Freeman, *Human Rights. Third Edition*, Cambridge, Polity Press, 2017, pp. 93-95.

impact. The best-suited regimes to be heavily influenced by the treaties they sign and ratify seem to be States not in full democracy but with certain freedom to discuss possible improvements. Another element that helps the implementation of human rights is the existence of some kind of external monitoring body (like the ECtHR).

The previous paragraphs prove that an analysis of the effects of the ECtHR on Transnistria cannot be limited to the pressure exerted by *one* external actor. To give an example, it is difficult to assess what is the impact of the ECtHR Article 3 judgments on the mistreatment and torture that takes place in Transnistrian prisons, for the MRT authorities do not only receive pressure on this point from the ECtHR, but also from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the United Nations (UN) Special Rapporteur on Torture, the European Union (EU), the International Committee of the Red Cross (ICRC), the constitutional authorities of Moldova, the Ukrainian diplomatic service, and, most important, the Organisation for Security and Cooperation in Europe (OSCE). Furthermore, the political authorities of the MRT could decide of their own motion, for humanitarian or political reasons, that the conditions of prisons must be improved; or civil society could start a debate forcing improvements.

Therefore, before analysing the case-law of the Court in Section 5, Section 4 will provide an analysis of the current state of events in Transnistria: its political activity, civil society debate, exposure to a reference group through international relations and capability of the external actors to actually influence the system (especially the degree of influence of the constitutional authorities of Moldova). The objective is to delimitate the internal and external factors that affect human rights compliance in Transnistria to be able to measure the effects of the ECtHR judgments discarding other causes.

### **3.2. Measurement of the effect of the judgments of the ECtHR**

The European Court of Human Rights issues judgments and decisions (the thesis refers collectively to all the case-law produced by the Court as 'judgments') in which it declares whether the complaint brought by the applicant is admissible or not; and if it is, whether the role of the State constitutes a violation of the Convention or not. Although the Court

can afford just satisfaction under Article 41, it tends to consider that any other obligation imposed upon the State is of results and not of means, and therefore refuses to give specific instructions<sup>24</sup>. However, in recent decades the Court has opened the door to asking for general measures when there is a systemic problem<sup>25</sup> or for specific non-monetary measures when *restitutio in integrum* is possible and can cease a continuing violation<sup>26</sup>. Despite these advances, the judgments do not give specific instructions and the Court has no role in their individual implementation. Once the judgments are issued, the Committee of Ministers of the Council of Europe becomes the competent body to supervise the execution. This means that its role is subsidiary to the duty of the State itself to implement the judgment. It cannot interpret the text (it can ask the Court for clarification but there are no precedents)<sup>27</sup>. The documents it produces can be found in the archive of the Department for the Execution of Judgments. When the Committee of Ministers concludes the State has met its obligations, it produces a Resolution declaring the case closed.

Therefore, a possible approach could be to check how many cases of the Transnistria saga have been closed. The result would be: out of 50 cases 3 are closed, 34 are pending and the rest were declared inadmissible<sup>28</sup>. This picture would be misleading and incomplete, for not every pending case is in the same state of proceedings. A second step would be to distinguish each mandate the Committee of Ministers extracts from the judgment. For example, when two States (in the Transnistria saga, Russia and Moldova) are found in violation, one might pay in time while the other keeps the case open for years. Or one State might pay the applicants but not take any measure to stop/prevent the violation. Even when the case is closed, it does not entail a situation of compliance with the Convention. Imagine a case of an illegal imprisonment where the sole measure required of the State is to free the applicant, but this person dies in prison. The case would be

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<sup>24</sup> E. Lambert Abdelgawad, 'The Execution of the Judgments of the European Court of Human Rights: Towards a Non-coercive and Participatory Model of Accountability', *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, vol. 69, no.1, 2009, p. 474.

<sup>25</sup> V. Colandrea, 'On the Power of the European Court of Human Rights to Order Specific Non-monetary Measures: Some Remarks in Light of the *Assanidze*, *Broniowski* and *Sejdovic* Cases', *Human Rights Law Review*, vol. 7, no. 2, 2007, pp. 403-406.

<sup>26</sup> *ibid*, pp. 398-400.

<sup>27</sup> Apostol, pp. 29-30.

<sup>28</sup> See Figure B for the complete list.

closed, but no observer would conclude this to be a victory of human rights – on the contrary, the period of imprisonment should be analysed to determine the deficiencies in implementation of the Convention in the country concerned.

It is for this reason that Von Staden distinguishes between ‘execution’ and ‘compliance’:

“Compliance,” as used in this work and in line with standard definitions of the term, refers to the conformity of an actor’s observed behavior with the requirements of a behavioral prescription applicable to that actor – in the present context, the behavioral requirements following from an adverse judgment rendered by the Court. “Execution,” by contrast, is closer to the more familiar term “implementation” and captures the process of adopting specific remedial measures in order to give effect to a judgment. While the execution of a judgment under the Convention has to be undertaken with the aim of procuring compliance with it, the two are not congruent. Although execution/implementation has been noted to be “neither a necessary nor sufficient condition for compliance” in the case of treaty law, in the context of adverse judgments it does generally become a necessary condition as the obligation to provide restitution to the injured party almost always requires some, if minor, steps to be taken<sup>29</sup>.

The specific case of Transnistria adds another reason to distinguish both concepts. The paragraph above considers that there are two authorities, the Council of Europe (the Court and the Committee of Ministers) that mandates certain actions and the State that implements the judgment and complies with the Convention. The main power on the territory that this thesis analyses is a non-recognised State that has no hierarchical or federal relation to any of the States that are part in the proceedings (Moldova and Russia), and therefore it cannot properly ‘execute’ the judgments. Compliance, on the other hand, is a matter of all three authorities when it is within their power to foster or hamper the standing of the Convention.

The difficulties the Court experiences to reach Transnistria create the need to consider a third, wider category, which I will label ‘impact’: it is any other effect that the activity of the Court has on Transnistria. For example, when the possibility of an intervention of the Court prompts the regime to mistreat prisoners to discourage them from bringing a

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<sup>29</sup> A. von Staden, ‘Shaping Human Rights Policy in Liberal Democracies. Assessing and Explaining Compliance with the Judgments of the European Court of Human Rights’. Doctoral Dissertation, Princeton University, 2009, p. 55. <https://search-proquest-com.uaccess.univie.ac.at/docview/304990051?pq-origsite=primo> (accessed 20 July 2020)

complaint<sup>30</sup> or the issue is raised in multilateral meetings, unrelated to the Council of Europe<sup>31</sup>, where the judgment is one of many documents on a specific matter and it is impossible to decide how much influence is owed to the Court and how much to the pressure of other actors (e.g. OSCE) on the same topic. These situations are not described under ‘execution’ or ‘compliance’, but they must be taken into account to examine the nature of the dialogue between the ECtHR and Transnistria.

In conclusion, the following sections will classify the ‘effects’ of the Court on Transnistria in three categories which contain one another as concentric circles:

- The *execution* of the judgments and decisions, which are the actions aimed at following the mandates of the Court as interpreted by the Committee of Ministers. This is required of Moldova and Russia, although it can be attributed to the MRT inasmuch as its authorities take actions with the explicit intention of executing a judgment of decision.
- The *compliance* with the Convention (or ‘general compliance’, to distinguish it from the specific mandates of execution) results of any action by Moldova, Russia, or the MRT that leads to a better conformity with the Convention on the territory (or, in the negative sense, that reduces a previous conformity), regardless of its intention: compliance can arise of actions aimed at executing the judgments, raising human rights standards in general, or without an explicit objective.
- The *impact* of the Court is any event that would not have happened without its intervention.

The period when these effects are perceived is broadly referred as the ‘implementation process’, for it is wider than the official concept of ‘execution phase’, and to differentiate it from the legal proceedings before the Court.

What can rarely be assessed is the degree of influence of the ECtHR. In a closed regime such as the MRT, information on the reasons for the actions of the leadership is not always

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<sup>30</sup> ECtHR, *Ilașcu*, para. 270

<sup>31</sup> Council of Europe: Ministers’ Deputies Information documents, CM/Inf/DH(2006)52-rev2, 7 May 2007, 984<sup>th</sup> meeting of the Ministers’ Deputies, para. 26.

publicly available. Given the standing of the first case<sup>32</sup> this thesis works under the assumption that whenever the Court rules on a specific topic, the MRT is aware of it. However, when multiple actors are implicated it is impossible to differentiate causes. How would the negotiations on schools<sup>33</sup> be without the Court's judgment? Would the OSCE be more or less effective handling it alone? These questions cannot be answered.

## **4. SITUATION**

This section analyses the paths through which the Convention can reach Transnistria. It starts with the conflict to explain the current state of events under the MRT as well as the possibilities of the Moldovan constitutional authorities to operate in Transnistria, and the international actors present.

### **4.1. The conflict**

This section provides a brief outline of the history of Transnistria and how it is present in the reasoning of the ECtHR. The judgments start their narrative in the 1990s, with the conflict. However, it starts on that point because it is only interested in the facts that help to determine which State has jurisdiction, but it does not give a full picture of the position of the MRT. Previous history is useful to understand the conflict of authorities as well as those cases where ethnical clashes cause the violations – it also informs some of the criticism that the Court has received and that must be mentioned in subsequent sections.

#### *A) Previous history of the area*

The Principality of Moldavia was a State during the Middle and Modern Ages that was successively a vassal to the Kingdom of Hungary, the Kingdom of Poland – Grand Duchy of Lithuania and the Ottoman Empire. As a result of the Russian-Ottoman wars, an eastern piece of it was annexed by the Russian Empire in 1812 under the name Bessarabia. One century later, in the chaos that ensued the October Revolution, the soldiers and peasants returning from the front led an uprising against the Russian ruling class<sup>34</sup>. The Moldovan

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<sup>32</sup> See section 5.2.

<sup>33</sup> See section 5.2.B.

<sup>34</sup> OSCE, 1994, p. 1.

Republic was proclaimed on 7 February 1918, although it was short-lived, as it immediately joined the Kingdom of Romania. During this time, Latin alphabet (which Romania had received during the 19<sup>th</sup> century) was forced onto Bessarabia<sup>35</sup>.

Shortly after, the Soviet leadership sought to reattach the territories of the Russian Empire that had declared independence. In the case of Bessarabia, the chosen strategy had Byzantine inspiration: to create an adjacent territory with the same name as a bridgehead to conquer the objective<sup>36</sup>. In 1924, a piece of Ukraine was detached with the name of Moldovan Autonomous Socialist Soviet Republic (MASSR). Its capital was Balta (today in Ukraine) until 1929, when it was moved to Tiraspol. The initial MASSR had four districts: Tiraspol, Rîbnita, Dubăsari and Ananyiv. All but the last one are still part of the MRT. As part of their strategy to present it as legitimate Moldovan soil, the Soviet authorities have been accused of tampering with the percentage of ethnic Moldovans in the region, growing from around 15 % to 48 % in 1924, and decreasing to 30 % in 1926<sup>37</sup>. Before being annexed by the Russian Empire, the settlements in this area had been controlled by Crimean Tatars under Ottoman suzerainty. In the period between their annexation (late 18<sup>th</sup> century) and the acquisition of Bessarabia, the Russian attached great importance to these territories as a frontier with the rival Ottoman Empire. In this period Generalissimo Alexander Suvorov founds the modern Tiraspol – he is now regarded as a national hero in Transnistria.

The MASSR ceased to exist in 1940, when the Soviet Union reconquered Bessarabia (as a consequence of the Ribbentrop-Molotov pact) and created the new Moldavian Soviet Socialist Republic (MSSR), to which most of the MASSR was attached, with the rest returning to Ukraine. It has been suggested that the decision to keep Transnistria attached to Moldova had the intention of eliminating the unity of Bessarabia and hamper its reunification to Romania<sup>38</sup>. During World War II there was a brief period of Romanian

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<sup>35</sup> R. Haynes, 'Historical introduction', in R. Haynes (ed.), *Occasional Papers in Romanian Studies, No. 3: Moldova, Bessarabia, Transnistria*. London, UCL School of Slavonic and East European Studies (SSEES), 2003, pp. 106-107.

<sup>36</sup> S. Troebst, 'The "Transdnistran Moldovan Republic": from conflict-driven state-building to state-driven nation-building', *European yearbook of national minority issues*, vol. 2 (2002-2003), 2004, p. 13.

<sup>37</sup> P. Kolstø, A. Yedemskii and N. Kalashnikova, 'The Dniester Conflict: Between Irredentism and Separatism', *Europe-Asia Studies*, Vol. 45, no. 6, 1993 (accessed 25 June 2020).

<sup>38</sup> *ibid*

military control of Transnistria. After joining the Axis, Antonescu's army ventured into the USSR and occupied (without annexing them to Romania) territories beyond river Dniester that were called 'Governorate of Transnistria'. It did not correspond exactly with present Transnistria and its administrative centre was Odessa<sup>39</sup>. All of it returned to the Soviet Union by the end of the war; the 1940 division between Ukraine and Moldova was reinstalled and lasted until the fall of the Union.

In 1956, Chişinău became the location of the headquarters of the USSR's 14<sup>th</sup> Army<sup>40</sup>. During Soviet rule, the whole Moldova was subject to Russification policies<sup>41</sup>, aided by the immigration of elites from all around the Soviet Union, although numerically the largest income of new urban residents came from the local countryside<sup>42</sup>. Under planned economy, the heavily industrialised Transnistria became the most powerful region in economic terms in a State mainly employed in agriculture<sup>43</sup>.

A recapitulation of the territorial movements and change of names might be useful to provide background to the present conflict. The principalities of Wallachia and Moldavia were independent States that would conform Romania in the nineteenth century, although the Russian Empire had conquered the eastern half of the latter (Bessarabia). This province took up the name Moldova (which it had had, historically) when it claimed independence to join Romania. The Soviet Union gave the name 'Moldova' (MASSR) to adjacent Ukrainian territories (which they had not had, historically), and later to Bessarabia plus three of the four districts of the MASSR – this is the MSSR, whose borders correspond with the internationally recognised Republic of Moldova. The constitutional authorities have effective control over a region that corresponds almost entirely with Bessarabia, while the MRT has effective control that corresponds almost entirely with the portion of the MASSR that remained within the MSSR. Among the

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<sup>39</sup> R.-A. Dragoman, 'Pagini inconfortabile din istoria arheologiei româneşti: Odessa şi Transnistria, 1941-1944', *Studii de Preistorie*, vol. 1, no. 13, 2016, pp. 9-10

<sup>40</sup> European Court of Human Rights, *Catan and Others v. Moldova and Russia* [GC], no. 43370/04, 8252/05, and 18454/06, 19 October 2012, para. 14.

<sup>41</sup> OSCE, 1994, p.1.

<sup>42</sup> O. Protsyk, 'Representation and Democracy in Eurasia's Unrecognized States: The Case of Transnistria', *Post-Soviet Affairs*, vol. 25, no. 3, 2009, p. 266

<sup>43</sup> Mole, p. 75

exceptions the most notable is the city of Bender, historically part of the Principality of Moldavia and Bessarabia and now controlled by the MRT.

Even before the declaration of independence, ethnic tensions started when Romanian in Latin alphabet was given the status of official language by a law passed on 31 August 1989<sup>44</sup>. This would leave Romanian and Russian as official languages through all the territory, while the Gagauz language would also be official in that province, and the languages of other minorities (Ukrainian) would be protected. The speakers are not equally distributed. It is wrong to imagine an ethnically Romanian constitutional Moldova and an ethnically Russian MRT - between 70 and 75% of the Slavs of Moldova live west of the Dniester river<sup>45</sup>, and Moldova-proper shares with the MRT the tendency of concentrating a russophone majority in the big cities surrounded by Moldovan-speaking countryside<sup>46</sup>. In the MRT, there are more Moldovans than Russians (around 1/3 and 1/4, respectively), but the latter conform the russophone group together with Ukrainians (around 1/3) and other Slavic minorities. However, it must be pointed out that some authors dispute the numbers given in the census elaborated by the separatist authorities<sup>47</sup>.

These events, never mentioned in the judgments, show that the territory did not belong historically to Moldova. However, it was not independent or purely ethnically-Russian either. The different dominating powers tried to create a cultural homogeneity that was never reached. Regarding the legal problems faced by the Court, unless we consider that the MSSR was an independent State, it turns out there was never an independent Moldova with *jurisdiction* over Transnistria.

### *B) Independence and conflict*

As the Soviet Union advanced towards its end, Moldova declared independence on 27 August 1991, linking it to the historical territories of Bessarabia and Bucovina and mentioning the presence of Moldovans in Transnistria<sup>48</sup>; the necessity of this mention is

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<sup>44</sup> OSCE, 1994, p. 2.

<sup>45</sup> OSCE, 1994, p. 4.

<sup>46</sup> Troebst, 2004, p. 8.

<sup>47</sup> Protsyk, p. 261.

<sup>48</sup> Declaration of Independence of the Republic of Moldova, enacted on 27 August 1991, as offered in translation by the Presidency of the Republic of Moldova, <http://www.presedinte.md/eng/declaration> (accessed 10 June 2020)

understandable, given that the MRT predated Moldova in declaring independence on 2 September 1990– from Moldova, not from the Soviet Union. The leadership at Tiraspol used a series of referenda on economic autarchy that had taken place in the previous months in the different cities to justify the decision of becoming an autonomous constituent entity of the Soviet Union<sup>49</sup>. But after it became clear that the Union would not continue, the MRT went on to proclaim full independence on 1 December 1991, fearing the ‘Romanization’ measures of the new Moldovan government<sup>50</sup>. The referendum for independence and the presidential elections happened on the same day.

The tension turned into violent conflict after the government seated in Chişinău tried to regain control of the offices of authorities such as the police and met resistance by the local forces<sup>51</sup>. The 14<sup>th</sup> army took part in the conflict on the separatist side, using the flags of the Soviet Union, the Commonwealth of Independent States and the Russian Federation<sup>52</sup>. Through 1992 the Moldovan forces could not take the Russian army out of Dubăsari and Bender. The end of the war period of the conflict is the ceasefire agreement between the Republic of Moldova and the Russian Federation of 21 July 1992.

The explanation of the conflict is still a matter of debate. Troebst lists the following labels: politicised regionalism; a classic ethnic conflict with a touch of ‘great power politics’ from the side of Russia; an ideological conflict partially fuelled by economy and ethnicity; as two opposing visions of history; as a conflict between the late Soviet elites and the Moldovan nationalists; as a whole new regional identity; as the consequence of unequal economic developments; as caused by large masses of workers sociologically dependent on Moscow, who would find the idea of independent Moldova strange; as a result of destabilisation by the 14<sup>th</sup> Army; as a resurrection of the inter-war MASSR; and as the birth of new elites of mixed local and Soviet origin<sup>53</sup>. In any case, all of them reflect one

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<sup>49</sup> Kolstø, Yedemskii and Kalashnikova

<sup>50</sup> OSCE, 1994, p. 1.

<sup>51</sup> N. Gherman, ‘Transnistria since 1990 as seen from Chişinău’, in R. Haynes (ed.), *Occasional Papers in Romanian Studies, No. 3: Moldova, Bessarabia, Transnistria*. London, UCL School of Slavonic and East European Studies (SSEES), 2003, p. 183.

<sup>52</sup> T. R. W. Waters, ‘Security Concerns in Post-Soviet Moldova: the Roots of Instability’, in R. Haynes (ed.), *Occasional Papers in Romanian Studies, No. 3: Moldova, Bessarabia, Transnistria*. London, UCL School of Slavonic and East European Studies (SSEES), 2003, p. 193.

<sup>53</sup> Troebst, 2004, pp. 19-21.

of the main points of the Transnistrian movement: they are not a seceding region of Moldova, but a region of the Soviet Union that *refuses to join* a new Moldovan State. The whole reasoning of the Court is based on understanding the situation as the conflict between a seceding region and the central authority, with the separatists receiving help from an external State. However, under this alternative vision, the central authorities of the Soviet Union (not Russia – the Russian Federation would eventually become its successor, but it was not a ‘third State’ at the time of the events) were protecting one of its constituent entities from being annexed by another. While it would not eliminate the violations of the Convention in the following decades, this line of reasoning would make the problem of attribution more complex.

### *C) Peace agreements*

The USSR ceased to exist as a subject of international law on 8 December 1991 by the Treaty of Minsk. After the Russian Federation became successor to the USSR in all organs and treaties of the United Nations<sup>54</sup>, it also became Moldova’s interlocutor in the conflict regarding the presence of the 14<sup>th</sup> army. The Russian and Moldovan presidents signed an agreement on 21 July 1992 in Moscow<sup>55</sup>. The agreement provided for the immediate cease of hostilities and the creation of a Joint Control Commission (JCC) that would have its seat in the city of Bender, as well as the neutrality of the 14<sup>th</sup> army. The consideration of their presence as an interim measure that had to be ended by agreement of both countries was stated in a latter agreement, on 21 October 1994.

The relation between the 14<sup>th</sup> army (later Russian Operational Group) and the MRT was always ambiguous, sometimes even to its own members. In 1991, the ‘President’ of the MRT created a ‘National Defence and Security Department’ presided by then-Lieutenant General of the 14<sup>th</sup> Army Iakovlev, who would be arrested by Moldova and freed after the intervention of Russia<sup>56</sup>. However on 1 April 1992 President Yeltsin of the Russian

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<sup>54</sup> The President of the Russian Federation, Letter to the Secretary-General of the United Nations, 24 December 1991. International Atomic Energy agency INFCIRC/397, 9 January 1992

<sup>55</sup> Соглашение о принципах мирного урегулирования вооруженного конфликта в Приднестровском регионе Республики Молдова [Agreement on the principles for the peaceful settlement of armed conflict in the Transnistrian region of the Republic of Moldova] (signed in Moscow on 21 July 1992, entered into force on 21 July 1992)

<sup>56</sup> ECtHR, *Catan*, para. 16

Federation officially placed the force under Russian command and renamed it Russian Operational Group in the Transnistrian Region of Moldova (ROG)<sup>57</sup>.

General Lebed, commander of the ROG, was elected a member of the Transdnistrian Parliament in 1993, although he later regretted it, saying the MRT was a criminal regime<sup>58</sup>, and accusing 'President' Smirnov of corruption<sup>59</sup>. General Sergeyev, who became its commander in January 2002, admitted he had contacts with the MRT authorities, but denied a general instruction or pattern: he would contact them if ordered to do so by his superiors in each individual case<sup>60</sup>. While the ROG is perceived as an element of destabilisation in Moldova proper, the population of the MRT has a positive perception of their role and protectors<sup>61</sup>.

There have been several attempts to replace the JCC with an international peace-keeping mission. A quadripartite force had been designed by the Ministers of Foreign Affairs of Moldova, Russia, Ukraine and Romania in March 1992, but the project remained unexecuted after the escalation in violence in June<sup>62</sup>. The weaponry was supposed to be retired first by 2002 and then by 2003, but the operation failed to show results.

## **4.2. Moldova**

As the territory of Transnistria is part of the Republic of Moldova according to the international community, the international actors on the region have their seat in Chişinău. This section provides a description of how much Chişinău can influence Tiraspol and which are the external forces present.

### *A) The legislation of Moldova*

Although the Constitution of Moldova (1994) does not directly mention the conflict, there are several indirect references in its preliminary title, such as two references in art. 1 and 3 to the indivisibility of the country, the prohibition that 'no national segment of

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<sup>57</sup> *ibid*, para. 19

<sup>58</sup> According to 'witness Z.', a former minister of Moldova. ECtHR: *Ilaşcu*, annex, para. 279.

<sup>59</sup> OSCE, 1994, p. 4.

<sup>60</sup> ECtHR, *Ilaşcu*, annex, para. 342.

<sup>61</sup> OSCE, 1994, p. 4.

<sup>62</sup> OSCE, 1994, p. 2.

population (...) may exercise state power on their own behalf', which 'shall constitute the gravest crime against people'<sup>63</sup>. Article 11 indirectly mentions the ROG by stating that '[t]he Republic of Moldova does not admit the stationing of any foreign military troops on its territory'. While Gagauzia gets an article (111) explaining its territorial unit, there is only an oblique reference to Transnistria in Article 110(2): [p]laces on the left bank of the Dniester River may be assigned special forms and conditions of autonomy, according to the special statutory provisions adopted by organic law'.

Effectively, the Moldovan parliament passed a law in 2005 approving a special status for the autonomous unit of Transnistria<sup>64</sup>. The autonomous unit does not correspond exactly with the territory controlled by the MRT, for the autonomous unit includes some districts controlled by Moldova (mainly around Dubăsari) and the second-largest city of the MRT, Bender, is not part of it. The law creates a Supreme Council of Transnistria and indicates that the judiciary will be part of the central Moldovan system.

The Moldovan Government includes a Deputy Prime Minister for Reintegration. The authorities in Chişinău have also added a special article to the electoral code about the 'particularities in the establishment and operation of polling stations'<sup>65</sup> for electors residing in the Left Bank of the Dniester. However, the system does not work swiftly, as the OSCE noted in their report that access to polling stations by Transnistrian voters was organised by bussing large groups of voters. This hampered the control of the polling stations and arose suspicions of vote buying<sup>66</sup>.

Moldova has aligned itself with the interpretation of the 'Namibia exception' according to which certain acts of unlawful authorities must be recognised to ensure protection of innocent citizens. For this reason Moldova has amended Lege no. 100/2001 in 2018 to

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<sup>63</sup> The Constitution of Moldova, as offered in English translation by the Constitutional Court of Moldova, [http://www.constcourt.md/public/files/file/Actele%20Curtii/acte\\_en/MDA\\_Constitution\\_EN.pdf](http://www.constcourt.md/public/files/file/Actele%20Curtii/acte_en/MDA_Constitution_EN.pdf) (accessed 5 July 2020), art. 2(2).

<sup>64</sup> Lege Nr. 173/2005, passed by the Parliament of Moldova on 22 July 2005, entered into force on 29 July 2005

<sup>65</sup> Republic of Moldova – Electoral Code as of 17 August 2019, as offered in translation by the Venice Commission, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2019\)028-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2019)028-e) (accessed 6 July 2020)

<sup>66</sup> OSCE, Republic Of Moldova Parliamentary Elections. 24 February 2019. ODIHR Election Observation Mission. Final Report, 22 May 2019, pp. 12 and 23. <https://www.osce.org/files/f/documents/8/a/420452.pdf> (accessed 6 July 2020)

bind Moldovan authorities to issue civil documents (e.g. birth certificates) when the MRT authorities register documents in line with the requirements of Moldovan law<sup>67</sup>, although there is no equivalent legislation on judgments issued by the separatists. This is understandable as it would grant the MRT agents wider powers to force their decisions onto Moldova, although the absolute ban is still criticised by scholars<sup>68</sup>.

### *B) The political activity of Moldova*

Moldova rejected joining Romania (one of the matters that triggered the conflict in the first place) by referendum in 1994<sup>69</sup>, and since then the question is considered closed.

There is a controversial collaboration between the two administrations (which is the main reason not only Russia but also Moldova is a respondent State in the cases brought before the Court of Strasbourg), but it does not work as swiftly as one might infer from the Court's statements<sup>70</sup>: while the ECtHR points out in its first judgment on Transnistria the freedom of movement of doctors to work in both areas, it should not be inferred that there is anything beyond a very basic coordination, as evidenced by the recent circumstances, when the extraordinary measures taken by the MRT to tackle the COVID 19 crisis affected the capacity of Moldova-proper hospitals<sup>71</sup>. Contacts have taken place in different fora. One of them is the meeting of the 'troikas' (both Presidents, both Prime Ministers and both Presidents of the Legislative Chambers) although this has happened twice and been ineffective<sup>72</sup>.

On 20 March 1998, the Republic of Moldova and the leadership of the MRT signed an agreement detailing their future collaboration<sup>73</sup>. Its content referred mainly to ensuring the disposal of Russian ammunition, but they also vowed to establish joint teams to fight

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<sup>67</sup> Poalelungi, p. 751.

<sup>68</sup> *ibid.*, p. 762.

<sup>69</sup> ECtHR, *Ilașcu*, dissenting opinion by Judge Dedov, II

<sup>70</sup> See *infra* the section on *Ilașcu and others* for the examples used by the Court to prove the collaboration

<sup>71</sup> M. Dulgher, 'The state of emergency in Transnistria caused a shortage of medical staff in Moldova', Moldova.org, 20 April 2020, <https://www.moldova.org/en/the-state-of-emergency-in-transnistria-caused-a-shortage-of-medical-staff-in-moldova/> (accessed 9 June 2020)

<sup>72</sup> OSCE, 1994, p. 5.

<sup>73</sup> Agreement of Odessa, on Confidence Measures and Development of Contacts between Republic of Moldova and Transdniestria, signed on 20 March 1998, as offered by OSCE <https://www.osce.org/files/f/documents/6/d/42310.pdf> (accessed 10 June 2020)

drug and arms dealing. They counted on Ukrainian collaboration and they appointed the JCC as the adequate entity to decide if the conditions detailed in the ceasefire of 1992 had been met. This led, for example, to a National Anti-Trafficking Strategy for 2018-2023, which included educative workshops not only for Moldova-proper civil servants, but also for civil servants from Gagauz and civil society representatives from Transnistria<sup>74</sup>. However, representatives of civil society are not the leaders. While Moldova has a channel of dialogue to bring the judgments to the negotiating table, there is no evidence that it has any actual power to execute them, or to force the MRT to compliance in general terms.

### *C) The international actors present in Moldova*

Chişinău is also the door for third states and international organizations to take part in the conflict. Current negotiations takes place in the '5+2 dialogues' (MRT, Moldova, Russia, Ukraine, OSCE, plus the United States of America and EU as observers). To these we have to add the international organizations that have offices on the field, which are once more the OSCE and the EU, with the addition of the CoE, of special relevance due to its relation to the Court.

The role of the European Union is limited to the European Union Border Assistance Mission (EUBAM), with 67 checkpoints in 955 km. The mission is based in Odessa, although the headquarters have the support of seven field officers, four in Ukraine and three in Moldova. The latter are stationed in Otaci, Chişinău, and Băşărăbeasca (all of them under the control of the Republic of Moldova)<sup>75</sup>. Despite being an observer in the talks and having its own programme of border assistance, the European Union would keep a low profile leaving the initiative to OSCE. Therefore, both in direct action and diplomacy the role of the EU in implementation and compliance is secondary.

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<sup>74</sup> OSCE: '2018-2019 Report of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings', 21 November 2019, p. 67 [https://www.osce.org/files/f/documents/2/8/439712\\_1.pdf](https://www.osce.org/files/f/documents/2/8/439712_1.pdf) (accessed 10 June 2020)

<sup>75</sup> Buzogany A., and Marandici, I., 'Vom Statisten zum Akteur? Die Europäische Nachbarschaftspolitik und die Rolle der Ukraine im Transnistrien-Konflikt', in B. Rill (ed.), *Die Ukraine - Partner der EU, Argumente und Materialien zum Zeitgeschehen*, Munich, Hans Seidel Stiftung, 2008, p. 86.

The OSCE is the leading organization in the dialogues. Its office in Moldova has been involved in confidence-building measures that directly tackle the several topics<sup>76</sup> that have been object of the activity of the Court<sup>77</sup>: access of farmers to lands, use of language in schools, and problems with car plates. In all these cases any advance has to be at least partially attributed to the intervention of the OSCE.

As for the office of the CoE in Moldova, it started its activities in Chişinău in June 1997. The only references to Transnistria in the Action Plan for 2017-2020 are the confidence-building measures (CBM) for people-to-people contact on both banks of the river Dniester<sup>78</sup>. These measures were facilitated from 2010, as part of the strategy of a new pro-European government<sup>79</sup>. Their latest activity addressed directly the educational problem by organising a two-day study visit to the Bologna secretariat for education professionals (along with Moldavian politicians and MRT 'decision-makers') from both sides of the river. However, the programme is aimed at building trust among professionals from different schools. This can be thematically linked to the judgments on harassment towards certain schools by the MRT authorities, but nothing in the mandate or in the report of past activities suggests that this specific problem was brought up or that the focus was on the status of schools in the border area<sup>80</sup>.

The activity of the office has been assessed by two bodies of the same organization. The Congress of Local and Regional Authorities of the CoE assesses positively the development of these measures while noting that they have not eliminated the pressure

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<sup>76</sup> OSCE Mission to Moldova: Confidence-building measures, <https://www.osce.org/mission-to-moldova/391502> (accessed 20 July 2020)

<sup>77</sup> See section 5.4.A

<sup>78</sup> Council of Europe, Action Plan for the Republic of Moldova 2017-2020, GR-DEM(2020)3 (document approved by the Committee of ministers of the Council of Europe on 1 February 2017 at its 1276<sup>th</sup> meeting), pp. 21-22

<sup>79</sup> Rodkiewicz, W. (ed.), *Transnistrian Conflict after 20 years. A report by an International Experts Group*. Warsaw-Chişinău, OSW centre for Eastern Studies and Institute for Development and Social Initiatives 'Viitorul', 2011, p. 13

<sup>80</sup> Council of Europe: GR-DEM Rapporteur Group on Democracy, Progress Review Report on the Council of Europe Action Plan for the Republic of Moldova 2017-2020, GR-DEM (2020) 3 (document prepared by the Office of the Directorate General for Programmes on 19 October 2019 to be considered by the GR-DEM at its meeting on 21 January 2020), 2.3.1. "Democracy"

on local authorities on both sides of the river<sup>81</sup>. It must be noted, first, that while the representatives of the Congress met the regional authorities of Gagauz, there was no direct contact with the MRT leadership<sup>82</sup>, and second, that the report offers no evidence on how they have measured this supposedly-increased confidence – while the opinion of the executive director of local NGO Promo-Lex (that took on the defence of several applicants before the Court) is that confidence from one side to the other has actually decreased<sup>83</sup>. The Parliamentary Assembly of the Council of Europe (PACE) did not mention any of the ECtHR's judgments in its last resolution concerning Moldova. The only point referred to Transnistria was limited to cooperation with the Russian Federation to remove the ammunition stock<sup>84</sup>.

A legitimate question is whether the CoE chooses to approach Transnistria through its office in Moscow and not Chişinău. However, none of its projects refer to Transnistria<sup>85</sup>.

There is no direct relation between the activities of the international organizations and the judgments, although they provide a forum for dialogue and they bring up essentially the same topic, seem not to have any influence on execution, if at all limited to opening new paths for impact and general compliance (if any improvement is registered).

#### **4.3. The political system of the MRT**

What follows is a description of the self-proclaimed State and its legal system, as well as its political situation. The section on Moldova presented the international actors; now it is time to consider the internal actors and how receptive to external action they can be expected to be.

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<sup>81</sup> Council of Europe: The Congress of Local and Regional Authorities, 22nd plenary session, Strasbourg, 20-22 March 2012, Recommendation 322 (2012)1: La démocratie locale et régionale en République de Moldova. 4.d and 5.k

<sup>82</sup> *ibid*, 1.d

<sup>83</sup> Promo-Lex, 'Human rights must prevail over politics in the dialogue between Chisinau and Tiraspol', 29 May 2020, <https://promolex.md/17843-drepturile-omului-trebuie-sa-prevaleze-in-fata-politicului-in-dialogul-dintre-chisinau-si-tiraspol/?lang=en> (accessed 8 June 2020)

<sup>84</sup> Council of Europe: The Parliamentary Assembly, Resolution 2308 (2019) on the functioning of democratic institutions in the Republic of Moldova, adopted by the Assembly in its 34<sup>th</sup> Sitting on 3 October 2019, 16

<sup>85</sup> Council of Europe Office in Moscow: Projects, <https://www.coe.int/en/web/moscow/projects> (accessed 8 July 2020)

### *A) The Constitution and the foundations of the system*

While the MRT is usually described as a Soviet-inspired system due to its geopolitical stance and its national narrative of history, an analysis of its legal system does not offer clearly such a reading. The current Constitution of the MRT dates from 1995 and is the second of its kind. The first one was passed on 1991, in the constituent procedure after declaring independence, and even then its structure differs from the model of authoritarian constitutions in that it attaches great importance to the role of the individual in society and lists fundamental rights in an early chapter<sup>86</sup>. Its reliance on local authorities must also be read in its context: having never existed as a province or a territorial unit of any kind, the local authorities of the districts that constituted Transnistria were the only functional political bodies in the region<sup>87</sup>. The 1995 Constitution brought a shift from a Soviet model to a parliamentary one, detaching the head of government from the head of State.

Following its current text<sup>88</sup>, we find in the preamble that the Constitution 'maintain[s] human rights and freedoms, as well as free development of person' and 'according to generally recognized principles and norms of international law'.

The first part enumerates the principles that guide the State. Article 10 establishes the principles of neutrality and non-use of force. Article 12 establishes that Russian, Ukrainian and Moldovan are official languages on equal ground (although the constitution itself is only offered in Russian and English).

Section II lists the fundamental rights, which are attributed to everyone without distinction (art. 17). Most of the rights that the ECtHR has found to be violated in the MRT are enshrined in the Constitution: right to life, prohibition of torture, prohibition of

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<sup>86</sup> V. Serzhanova, 'The 1991 Constitution of independent Transnistria', *Przegląd Europejski*, vol. 18, no. 4, 2017, pp. 136-137.

<sup>87</sup> *ibid*, p. 140.

<sup>88</sup> The Constitution can be found on the website of the Office of the President of the MRT: <http://president.gospmr.org/pravovye-akty/konstitutsiya-pmr/konstitutsiya-pmr-rus/> (accessed 20 June 2020). The same website has an unofficial English translation (<http://en.president.gospmr.org/pravovye-akty/konstitutsiya-pmr/>, accessed 20 June 2020) but its last update was in 2016. The quotes on this thesis come from the English version amended, when necessary, with translation by the author of the updated version.

arrest or home search unless legally prescribed, use of their native language... Freedom of expression has a limitation in the dissemination of information directed at attacking the 'constitutional system' (art. 27). Local power combines the councillors elected by suffrage and the heads of the local administration appointed by the President (art. 77 and 78).

Regarding elections, the MRT tends to over-represent Russians. The country is divided in seven districts: Tiraspol, Bender, Rîbnita, Dubăsari, Grigoriopol, Camenca and Slobozia. When it comes to elections, 47 electoral districts, of which 23 correspond to the three largest (and mainly Russian) cities: Tiraspol, Bender and Rîbnita<sup>89</sup>. Furthermore, most of the Moldovans in the Transnistrian Soviet have a background in the Communist Party and considerable stakes in the preservation of the old regime<sup>90</sup>. The most prominent among these is Grigoriy Marakutsa, three times speaker of Parliament and voice of the Moldovan minority. In 2010 only a third of the Members of Parliament had been born in Transnistria<sup>91</sup>. The electoral system is not considered to freely guarantee the participation of society due to the Russian control of all parties, the lack of access to information and the judicial persecution of the opposition<sup>92</sup>.

Finally, any description of how Transnistria works must mention Sheriff. Politics and civil society in Transnistria are dominated by this company. Founded by the local militia, it has obtained a monopoly over the Transnistrian market:

It is the largest employer in Transnistria (with 12,000 employees); the holding consists of more than ten firms and production plants representing various industries. For example, it owns supermarket chains, filling stations and a mobile telephone network operator. It has managed to effectively monopolise many branches of the regional economy. According to unofficial data, the holding controls approximately 50% of the construction market and around 90% of the fuel market. It is the only major Transnistrian enterprise to operate on principles close to those of a free market.

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<sup>89</sup> Protsyk, p. 264.

<sup>90</sup> *ibid*, p. 263

<sup>91</sup> *ibid*, 2009, p. 265

<sup>92</sup> Freedom House: Transnistria, 2020 <https://freedomhouse.org/country/transnistria/freedom-world/2020> (consulted 20 July 2020)

It does not receive state subsidies, although it enjoyed some customs privileges until the end of 2012<sup>93</sup>.

### *B) Brief political history*

The MRT's final word on its future regarding statehood was decided in a referendum in 2006, where a clear majority supported independence and integration with the Russian Federation. This referendum was not accepted by the international community<sup>94</sup> - in fact, the MRT has been extremely unsuccessful in obtaining recognition. Unlike other States with limited recognition, no Member State of the United Nations recognises it (not even its supposed protector State, Russia) and has only managed to be recognised by Abkhazia, South Ossetia and Nagorno-Karabakh. These four States conform since 2006 the Community for Democracy and Rights of Nations for their mutual support.

On the material side, immediately after the war the state-building of the MRT could be regarded as more successful than that of the Republic of Moldova, as the personalist rule of Smirnov and the persistence of economic interventionism gave better results than the political and economic instability brought by the liberalization of Moldova<sup>95</sup>, who suffered one of the strongest economic falls after the collapse of the Soviet Union<sup>96</sup>.

On the ideological side, as every State, the MRT has relied on a mythicized narrative to justify their present status. Their official history books portray them as the centre of Eurasia as well as an independent element of a Greater Russia; a people with a will that is manifested through history in events such as the Battle of Bender in 1992 – and the protagonists of these events shall be regarded as heroes, creating a personality cult<sup>97</sup>. The combination of the material and the ideological conditions resulted in polls showing

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<sup>93</sup> Całus, 2013, p. 2.

<sup>94</sup> BBC News: 'Trans-Dniester profile', BBC News, 13 December 2016, <https://www.bbc.com/news/world-europe-18286268> (accessed 10 June 2020)

<sup>95</sup> M. Kosienkowski, 'Testing Pluralism: Transnistria in the Light of 2011 Presidential Elections', in M. Kosienkowski (ed.), *Spotkania polsko-moldawskie. Księga poświęcona pamięci Profesora Janusza Solaka*, Lublin, Episteme, 2013, p. 306.

<sup>96</sup> M. Kosienkowski, 'The Gagauz Republic: Internal Dynamics of De Facto Statehood', *Annales Universitatis Mariae Curie-Skłodowska Lublin – Polonia, Sectio K*, vol. 24, no. 1, 2017, p. 129.

<sup>97</sup> Troebst, 2004, pp. 10-11.

satisfaction of the population with their government, although it was not as popular as the 14<sup>th</sup> army and the Orthodox Church<sup>98</sup>.

The first president, Igor Smirnov, was a member of the ethnically-Russian Soviet industrial elite, an engineer born in the peninsula of Kamchatka who had worked in power plants in southern Ukraine and Tiraspol<sup>99</sup>. The system he created has been described as corporatist rather than communist:

During summer 1992, right after the armed conflict had been done away with, the regime introduced a strategy which was meant to incorporate all politicised social groups, depriving them of any autonomy, but letting them participate in the process of the redistribution of budget resources, therefore granting them some room within the quasi -state organism. The security forces, national organisations, bureaucracy, employees and management at state factories should also be mentioned in this context<sup>100</sup>.

Nonetheless, this had more to do with Smirnov's authoritarian charisma than with the legal foundations. Therefore we can consider the two subsequent triumphs by opposition candidates as moderate advances, despite the fact that a strong concentration of power remains in the President's hands. These advances were involuntarily caused by Russia<sup>101</sup> when it moved its propaganda and economic support towards an alternative candidate (Kaminskiy) but failed to secure his victory. A third, independent candidate (Shevchuk) with political experience but who had been away from power for years (and could thus be perceived as not tainted by the corruption) was victorious, actually dividing power between different parties for the first time.

Vadim Krasnoselski was elected as the third president of the MRT in December 2016. The current president holds that the Moldovan State is guilty of war crimes against Transnistria, citing the *Ilaşcu* saga of cases as an example of how those guilty were not punished but rewarded<sup>102</sup>. As his predecessor had done to defeat Smirnov, Krasnoselski presented himself as a better-suited interlocutor for Russia and as the man who would end

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<sup>98</sup> *ibid*, pp. 25-26.

<sup>99</sup> *ibid*, p. 5

<sup>100</sup> Kosienkowski, 2013, p. 307

<sup>101</sup> *ibid*, p. 316

<sup>102</sup> M. Necsutu, 'Breakaway Transnistria Threatens to Sue Moldova for 'War Crimes' ', Balkan Insight, 29 May 2019, <https://balkaninsight.com/2019/05/29/breakaway-transnistria-threatens-to-sue-moldova-for-war-crimes/#gsc.tab=0> (accessed 8 June 2020)

State corruption. However, both he and then-incumbent Shevchuk shared a background working for the company Sheriff, so the economic status of the country did not vary<sup>103</sup> - in fact, he has been controlling the media to censor negative messages about Sheriff or himself<sup>104</sup>. He continues the policy of close relations to Russia, recently encouraging the citizens of the MRT to vote in the referendum on the amendments to the Russian constitution, emphasizing that 'Transnistrians always take part in the electoral processes of the Russian Federation, demonstrating an active citizenship and unity with the Russians'<sup>105</sup>. He has also established an office representing Transnistria in Moscow<sup>106</sup>, despite Russia's lack of recognition.

On the topic of human rights protection, one year after his election the new president reportedly told the Council of Europe Human Rights Commissioner that HR violations were practically non-existent in Transnistria<sup>107</sup>. The MRT's attitude towards fact-finding missions by international bodies has not been constant, although traditionally the OSCE has managed to access the territory more frequently. While they refused permission to the Human Rights Commissioner of the Council of Europe in 2000<sup>108</sup>, the OSCE High Commissioner for National Minorities Max van der Stoep already travelled to Transnistria

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<sup>103</sup> A. Leşanu, 'Transnistria's presidential election: A hard-fought contest with no punches pulled, as Russia diverts its attention from the unrecognised state', EUROPP, 23 December 2016, <https://blogs.lse.ac.uk/euoppblog/2016/12/23/transnistrias-presidential-election/> (accessed 10 June 2020)

<sup>104</sup> G. Comai, 'After a new president came to power, what happened to Transnistria's media?', Osservatorio Balcani e Caucaso Transeuropa, 18 June 2018 <https://www.balcanicaucaso.org/eng/Areas/Transnistria/After-a-new-president-came-to-power-what-happened-to-Transnistria-s-media-188493> (accessed 6 July 2020)

<sup>105</sup> 'всегда принимают участие в электоральных процессах Российской Федерации, демонстрируя активную гражданскую позицию и единение с россиянами' (translation by the author). The Presidency of the MRT, 'Президент Приднестровья с супругой приняли участие в голосовании по поправкам в Конституцию России' [The President of Transnistria and his wife took part in the vote on amendments to the Constitution of Russia], 1 July 2020 <http://president.gospmr.org/press-sluzhba/novosti/prezident-pridnestrovjya-s-suprugoy-prinyali-uchastie-v-golosovanii-po-popravkam-v-konstitutsiyu-rossii.html> (accessed 6 July 2020)

<sup>106</sup> The Presidency of the MRT, 'В Официальном представительстве Приднестровья в Москве подвели итоги первого года работы' [The official representative office of Transnistria in Moscow summed up the results of the first year of work], 29 January 2020, <http://president.gospmr.org/press-sluzhba/novosti/v-ofitsialnom-predstavitelstve-pridnestrovjya-v-rossii-podveli-itogi-pervogo-goda-raboti.html>

<sup>107</sup> C. Vlas, 'Transnistria leader to CoE Human Rights Commissioner: Violations of human rights are practically nonexistent', Moldova.org, 12 October 2017, <https://www.moldova.org/en/transnistria-leader-coe-human-rights-commissioner-violations-human-rights-practically-nonexistent/> (accessed 9 June 2020)

<sup>108</sup> ECtHR, *Plaşcu*, para. 288.

in 1994, meeting Smirnov and several ministers<sup>109</sup>; and a senior adviser of the OSCE representative for Freedom of the Media was there between 31 January and 2 February 2005<sup>110</sup>. The most relevant for this thesis is UN expert Thomas Hammarberg, who had written a first report on Transnistria in 2013, and visited the country again in 2018 to publish a follow-up report. In it he acknowledges the development of internal administrative documents on the topic by the MRT administration<sup>111</sup> leading to moderate improvement in some areas<sup>112</sup>. However, these are mainly referred to the slightly wider space for civil society created as a reflection of the limited pluralism that resulted from Smirnov's depart. Through the rest of the report he repeats all his recommendations from 2013 recommendations, leaving the doubt of whether there is a cause-effect relation between the report and the supposed improvement. If proved, it would be the only evidence of a scarce and very limited effort of the MRT to gain legitimacy through improvement of its human rights record.

### C) Assessment

It is derived from the previous sections that despite a very limited pluralism there is no debate in the MRT on the relation to the international community or its position towards the Convention. Actually, it stands in a position of denial of any breach of human rights and the Court does not reach Transnistrian civil society, even in an informal way such as its prominence. Recent political events have opened a wider space to civil society. This could be an interesting opportunity in the future, but as of now there is no internal movement that can cause the implementation of the judgments or general compliance with the Convention. Consequently, it seems that progress can be nearly exclusively attributed to external pressure.

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<sup>109</sup> S. Troebst, "'Gospodin Max" in Moldova: a note on the visit of the OSCE High Commissioner on National Minorities to Gagauzia and Transdnistria in December 1994', *European yearbook of national minority issues*, vol. 3 (2003/2004), 2005, pp. 144-145

<sup>110</sup> OSCE, 'Observations and recommendations from the OSCE Representative on Freedom of the Media, Miklos Haraszi's, visit to the Transdnistrian Region of the Republic of Moldova', 10 March 2005, <https://www.osce.org/files/f/documents/8/6/14399.pdf> (accessed 10 June 2020)

<sup>111</sup> T. Hammarberg, Follow-up Report on Human Rights in the Transnistrian Region, 2019, p. 9 [http://www.undp.org/content/dam/unct/moldova/docs/Follow-up\\_Report\\_TH\\_2018.pdf](http://www.undp.org/content/dam/unct/moldova/docs/Follow-up_Report_TH_2018.pdf) (accessed 8 July 2020)

<sup>112</sup> *ibid*, p. 41

After all the channels of dialogue between Transnistria and the Court have been presented, it is moment to discuss the judgments themselves.

## **5. THE ECTHR JUDGMENTS ON THE TRANSNISTRIAN SAGA**

The Transnistria saga before the ECtHR consists of 50 cases (including decisions declaring inadmissibility and those that are still in the stage of communication)<sup>113</sup>. It started in 1999 when the complaint for *Ilaşcu* (issued in 2004) was lodged, and is not yet closed, as new judgments continue to be issued in 2020 on the same topics and violations.

The core of the saga are the Grand Chamber judgments *Ilaşcu*, *Catan* and *Mozer*, as well as the Chamber judgment *Ivanțoc*, the first one being central. All subsequent judgments and decisions draw in the doctrine established in these four, with little improvement over the last decade. For this reason the basic reasoning of the Court and these five judgments will be explained before analysing the common characteristics of the whole saga. The consequences of the judgments are left to the section on execution.

### **5. 1. General presentation of the legal problem**

Article 1 of the Convention states that ‘[t]he High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention’. Determining which State can be found in violation implies determining which State will be required to implement the judgment. The Court has, through different judgments, explained the concept of jurisdiction:

- Jurisdiction is mainly territorial and assumed to be exercised normally throughout the State’s territory<sup>114</sup>.
- The presumption can be limited in exceptional circumstances. This includes cases where the State’s capacity to exercise authority is curbed by the effective control exercised by rebel or foreign forces<sup>115</sup>.

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<sup>113</sup> See Figure B.

<sup>114</sup> European Court of Human Rights, *Banković and Others v. Belgium and Others* (dec.), [GC], no. 52207/99, 12 December 2001, para. 59.

<sup>115</sup> *ibid*, para. 70-71.

- When a State is operating outside its national territory, its responsibility is engaged when there is an overall control of the area; there is no need of a detailed control over the authorities in the area<sup>116</sup>. The responsibility will be engaged even 'on account of acts which have sufficiently proximate repercussions on rights guaranteed by the Convention, even if those repercussions occur outside its jurisdiction'<sup>117</sup>.
- Where there is overall control, the State becomes responsible for the acts not only of its soldiers, but also of the local administration that is unable to survive without its support, and of private individuals where there is acquiescence or connivance of State authorities<sup>118</sup>.
- The State is strictly liable for the acts of its subordinates, even if they are acting *ultra vires* or contrary to their instructions. The State cannot dismiss the case by arguing it is unable to ensure that its agents follow its orders<sup>119</sup>.

Using the principles above, the Court concludes that Transnistria, being internationally recognised as part of Moldova, is in principle under its jurisdiction. However, it must analyse whether the situation has precluded the constitutional authorities from acting, and whether a third State (Russia) has extraterritorial jurisdiction. The answer is not the same in every case. Both Russia and Moldova are respondent States. In the first cases the Court would analyse the effective control over the situation of both, with varying results. As the following sections will prove, the situation has evolved into an almost automatic discharge of Moldova and violation by Russia, as the first cannot act and the second refuses to do it.

The analysis has a blind spot: what is the role of the MRT, not being a part in the proceedings? Its political and judicial bodies are considered to be part of the State found to be responsible. Whether they are considered equal to the bodies of that State (this is, able to discharge the responsibility of the State by ending and repairing the violation) is

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<sup>116</sup> European Court of Human Rights, *Loizidou v. Turkey* (merits) [GC], no. 15318/89, 18 December 1996, para. 56.

<sup>117</sup> ECtHR, *Ilaşcu*, para. 317, explaining the principle taken from European Court of Human Rights: *Soering v. the United Kingdom*, no. 14038/88, 7 July 1989, para. 88-91.

<sup>118</sup> European Court of Human Rights, *Cyprus v. Turkey* (just satisfaction) [GC], no. 25781/94, 12 May 2014, para. 77 and 81.

<sup>119</sup> European Court of Human Rights, *Ireland v. the United Kingdom*, no. 5310/71, 18 January 1978, para. 159.

also discussed in different judgments and receives different answers. It must also be contrasted with the other self-proclaimed authorities that are on similar situations.

## 5.2. *Ilașcu*

### *A) Background and facts*

Ilie Ilașcu was the leader of the Tiraspol branch of the Popular Front, advocating for the union of Moldova and Romania<sup>120</sup>. He would be elected in absentia first as Member of the Moldovan Parliament (1994) and then, after acquiring Romanian nationality, as Romanian Senator (2000)<sup>121</sup>. He was arrested on 2 June 1992, as Alexandru Leșco and Andrei Ivanțoc, while Tudor Petrov-Popa would be arrested on 4 June. The latter denied having participated in the Activities of the Popular Front and claimed he did not know Ilie Ilașcu before his detention<sup>122</sup>. They were charged with anti-Soviet activities, with fighting the State through illegal means and with the murder of two people of Transnistria. All of them were detained at the premises of the 14<sup>th</sup> army, the prison of Tiraspol and subsequently condemned by the Supreme Court of the MRT. This sentence was declared unlawful by the President of Moldova, as well as by the Supreme Court of Moldova. Ilașcu's situation was a usual topic of discussion in meetings among the different actors in the region, and he was finally released on 5 May 2001 by a Decree signed by President Smirnov, who also communicated it by letter to the Moldovan State, arguing that the gesture should be compensated by the acceptance of Moldovan aggression against Transnistria<sup>123</sup>. After his release, he resumed his career as a politician in Romania until 2015, when he returned to Moldova to create a unionist party<sup>124</sup>. By the time of the release of the judgment, the other three remained in prison. All of them would eventually receive awards by the Romanian State<sup>125</sup>.

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<sup>120</sup> ECtHR, *Ilașcu*, para. 190.

<sup>121</sup> *ibid*, para. 20.

<sup>122</sup> *ibid*, annex, para. 124.

<sup>123</sup> *ibid*, para. 279-282.

<sup>124</sup> A. Mondiru, 'PORTRET: Patriotul român Ilie Ilașcu împlinește 65 de ani', Rador, 30 July 2017, <http://www.rador.ro/2017/07/30/portret-patriotul-roman-ilie-ilascu-implineste-65-de-ani/> (accessed 10 June 2020)

<sup>125</sup> 'Decorații pentru "grupul Ilașcu"', Jurnalul National, 2 August 2010, <https://jurnalul.antena3.ro/stire-externe/decoratii-pentru-grupul-ilascu-551008.html> (accessed 10 June 2020)

### *B) Establishment of jurisdiction ratione loci*

The Court's reasoning to analyse these elements starts with one of the most interesting notes of the judgment: the Court had to clarify obscure facts, referred not only to the moment of the violation, but to the whole history of the MRT since 1991. In an unusual move, the Court sent four judges to hear forty-three witnesses in Chişinău and Tiraspol from 10 to 15 March 2003<sup>126</sup>. These witnesses included the relatives of the applicants, doctors who had treated them and soldiers, civil servants and politicians, including former Moldovan President Mircea Snegur. However, the highest-ranking MRT authority interviewed was Yefim Sansonov, Director of the Prison Medical Service of the MRT. The summaries of their statements can be found in an annex to the judgment. Three of the witnesses have their identities protected.

The historical narrative starts mentioning the creation of the MSSR in 1940 and then jumps to the dissolution of the USSR. There is a lengthy narration of the conflict until the agreements of 21 July 1992. The narrative is presented as solid and straight-forward. It only mentions and discusses alternative versions when it comes to Russian presence on Moldovan soil and its contribution to the existence of the MRT.

The ECtHR dealt with the question of how the Transnistrian separatist forces had obtained their weapons. Were they stolen from the 14<sup>th</sup> Army or willingly given by them? Using the witnesses' account and reasoning on the improbability that women and children seize weapons unnoticed from a professional army<sup>127</sup>, the Court accepts the version that Russia's military and political support was necessary for the *creation* of the MRT.

The second element used to establish the jurisdiction is the relation with both States after the end of the conflict. No doubt is cast upon the fact that the MRT is Moldovan territory in the eyes of the international community, and therefore the Republic of Moldova is bound by the ECHR to respect, protect and promote human rights in the region from the moment of its accession. As a region effectively controlled by a secessionist group, it is largely out of its reach, although some degree of collaboration was noticed<sup>128</sup>: a single

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<sup>126</sup>ECtHR, *Ilaşcu*, para. 12.

<sup>127</sup> *ibid*, para. 57.

<sup>128</sup> *ibid*, para. 162-185.

telephone system for the whole territory, de facto collaboration on judicial and security matters, open circulation for private individuals and specifically doctors, and good chances for MRT officers to continue their career in Moldova (such as a former 'Minister of Justice' becoming Moldovan Ombudsman between 1998 and 2001). The Court, however, explicitly states that certain degree of cooperation is necessary to fulfil its positive obligations towards the inhabitants of Transnistria. This cannot be understood as acceptance of the loss of sovereignty. However, the Court observes that Moldova's specific interest in solving the situation of the applicants ended after Ilașcu's release<sup>129</sup>.

As for Russia, several elements are analysed: the use of Tiraspol airport as free space by both Russian military and MRT<sup>130</sup>; the unfulfilling of the agreement to withdraw the surplus ROG equipment by December 2002<sup>131</sup>; the unclear relation between the MRT and the ROG, on which no specific instruction was found, but several examples of collaboration (mixed with some confrontation incidents) were proven<sup>132</sup>, added to the fact that 50% of ROG officers and 80% of its non-commissioned officers were inhabitants of the MRT<sup>133</sup>; the fact that, despite the absence of formal recognition, Russian leaders, included President Yeltsin, had verbally expressed their support for the MRT or joined official MRT celebrations<sup>134</sup>; the acquisition of Russian nationality by MRT leaders, including president Smirnov, and the award of official Russian distinctions<sup>135</sup>; and, most important of all, the MRT depended completely on Russia to receive weaponry, electricity, and gas (in more favourable terms than the rest of Moldova), as well as exporting its products to the Russian market, sometimes labelled as Russian<sup>136</sup>. These elements contributed to prove that the connection between the MRT and the Russian Federation continued beyond the war. According to the Court, the strong dependency indicates that Russia exercises effective control and a decisive influence over the MRT, and therefore the applicants fall within its jurisdiction.

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<sup>129</sup> *ibid*, para. 348.

<sup>130</sup> *ibid*, para. 117.

<sup>131</sup> *ibid*, para. 123 and 131.

<sup>132</sup> *ibid*, para.132-136.

<sup>133</sup> *ibid*, para. 152.

<sup>134</sup> *ibid*, para. 138 and 154.

<sup>135</sup> *ibid*, para. 148-149 and 155.

<sup>136</sup> *ibid*, para.150-151 and 156-158.

### *C) Establishment of jurisdiction ratione temporis*

The ECHR came into force on 12 September 1997 in Moldova and on 5 May 1998 in the Russian Federation. For this reason, the legal proceedings before the 'Supreme Court of the MRT', that ended by a judgment of 9 December 2013, fall out of the jurisdiction of the Court. The MRT legal system is never analysed. Only the lasting consequences (the imprisonment, the mistreatment) are object of the analysis.

### *D) Ruling*

The allegations of the applicants and the declarations by the witnesses were evidence of the inhuman conditions, strict isolation and physical aggressions suffered by the applicants<sup>137</sup>. This constituted a violation of Article 3.

The imprisonment was ordered by patently arbitrary courts. The Court considers here the 'Namibia exception' established by the International Court of Justice (ICJ) in 1971<sup>138</sup>, by which the acts of certain illegitimate organs must be accepted in order not to worsen the situation of the inhabitants, the main example being birth certificates. The Court, however, denies that the legal system of the MRT meets any standard under the Convention (*without* analysing it) and deems it completely illegitimate<sup>139</sup>. Therefore there was a violation of Article 5.

While the interviews proved useful to analyse the detention period, the claims regarding confiscation of possessions could not be proven. In absence of consistent factual basis, the Court holds that there has been no violation of Article 1 of Protocol 1.

During the negotiations, both Russia and Moldova obstructed the applicants' access to the ECtHR<sup>140</sup>. Therefore there was a violation of Article 34.

All the violations were causally linked to Russia, while Moldova was found in violation for its obstruction to Article 34 and its lack of positive measures to solve the situation of

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<sup>137</sup> For details, see ECtHR, *Ilașcu*, para. 240-272.

<sup>138</sup> International Court of Justice, *Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, 21 June 1971.

<sup>139</sup> ECtHR, *Ilașcu*, para. 458-464.

<sup>140</sup> *ibid*, para. 481-482

two applicants regarding Article 3 and 3 applicants regarding Article 5 – this means every violation that happened after Ilaşcu’s release was also attributed to Moldova.

The political nature of the case implies that while the research performed by the Court remains useful for subsequent cases, the consequences are not – this judgment is about the trial and mistreatment of specific people targeted by the MRT government.

### **5.3. The other core cases**

The judgments of the Transnistria saga do not only refer to *Ilaşcu* to assert established facts. Three other cases required a lengthy examination. The analysis of *Ilaşcu* was unavoidably linked to the conflict of 1991-1992. These cases allowed the Court to examine the state of Human Rights in Transnistria and the influence of Moldova and Russia after the stagnation.

#### *A) Ivanțoc*

This case is nothing else than a continuation of *Ilaşcu* in the most literal sense: as by the time the Grand Chamber judgment was issued three of the ‘Ilaşcu four’ were still in prison, two of them complained to the Court again, arguing that their detention after the Moldovan and Russian authorities received the judgment (and became, therefore, aware beyond all reasonable doubt that they were violating the human rights of the applicants) constituted a new and different violation. After four unsuccessful years, they lodged a new complaint in 2005. However, by the time the new judgment was issued (November 2011) they had both been freed (2 and 4 June 2007)<sup>141</sup>.

The judgment does not constitute an innovation of any kind in its legal reasoning. Its main contribution is the analysis of violations that did not take place during the war, and therefore that were not committed with the direct collaboration of the agents of any of the parties. When it comes to revising the jurisdiction problem, the ECtHR divides the analysis in two sections: a recapitulation of its findings in *Ilaşcu* and an examination of whether those reasons continue to apply. In the case of Moldova, the Court notes with

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<sup>141</sup> European Court of Human Rights, *Ivanțoc and Others v. Moldova and Russia*, no. 23687/05, 15 November 2011, para. 4

satisfaction that after the first judgment the Moldovan authorities started to raise the issue of the fate of the applicants in the bilateral and multilateral meetings, and understands that there is little more that a State such as Moldova could do<sup>142</sup>. Therefore Moldova has done every necessary effort to discharge itself of its obligations under the Convention.

As for Russia, the Court reuses its previous arguments on economic and military support. Although it had already stated in *Ilașcu* that this was enough to establish Russia's jurisdiction, in that case the ROG had been directly involved in the detention and Russia had been a materially present actor during the war. This time Russia has already limited its presence to the peacekeepers of the JCC and no Russian authority has directly participated in the detention. The Court establishes here that the passive attitude towards the violations of human rights in Transnistria while it keeps its economic and military support is enough to attribute the violations to the Federation<sup>143</sup>.

*Ivanțoc* starts a trend that will be constant, almost absolute in the cases of the Transnistria saga: both Moldova and Russia are respondent States, but Moldova discharges its obligations, and Russia is found in violation even though it refuses to participate in the proceedings.

#### *B) Catan*

One year after *Ilașcu*, the Court faced a completely different case. This one is not tied to the political activity of the applicants, but to the ethnic tensions that arise as they try to carry out their professional duties. The case joins three applications by families of students from Evrica School (Rîbnita), Alexandru cel Bun School (Bender) and Ștefan cel Mare (Grigoriopol). Rîbnita and Grigoriopol are MRT-controlled cities very close to the 'border', while Bender is the seat of the JCC<sup>144</sup>. What these schools have in common is the Moldovan curriculum. This means that the vehicular language in education was Moldovan-Romanian in the Latin script. As it has been described in previous sections, the MRT does not reject the use of the Moldovan language, but it keeps the Cyrillic

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<sup>142</sup> *ibid*, para. 107-111

<sup>143</sup> *ibid*, para. 116-120

<sup>144</sup> For an analysis of the implications of Bender's status for the Court (which do not affect this specific case), see *infra* the section 5.5.

alphabet as was done in the times of the Soviet Union. The prohibition of using the Latin script precedes the current MRT Constitution; it dates from 18 August 1994<sup>145</sup>. However, two schools agree in their narrations that the MRT started adopting a more proactive attitude of harassment in 2004, while the third enounces that the aggression started in 2002<sup>146</sup>.

According to one of the teachers of Grigoriopol, being a Romanian teacher in a Russian school first meant harassment and unemployment for five years. Then she was arrested and held in the prison of Tiraspol. She affirms that the worst part of the terror-instilling tactics is that the children fear being seen with books or texts in Latin alphabet, as this might cause them physical aggressions<sup>147</sup> (it is interesting that she mentions UN, CoE and the possible pressure of western States, but not the ECtHR). The harassment would have included sending an agent to supervise the lessons, who would reprimand children for writing in Latin alphabet – their notebooks would be sent to the prosecutor's office<sup>148</sup>. The principal of the school considered there was an intention to *eliminate* Moldavian ethnicity<sup>149</sup> - the OSCE High Commissioner on National Minorities, Rolf Ekeus would call it 'linguistic cleansing'<sup>150</sup>.

It was precisely the OSCE office in Moldova who took on the protection of these families, although the Council of Europe, Ukraine and the Russian Federation also acted as mediators at different times<sup>151</sup>. After the MRT suspended the water and electricity supplies to the schools, these were occupied by parents and teachers. At this point the Moldovan authorities intervene, with support and protection by the OSCE. The MRT

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<sup>145</sup> ECtHR, *Catan*, para. 44.

<sup>146</sup> *ibid*, para. 49, 55 and 60

<sup>147</sup> E. Cecavschi, Interview for Transnistria.md, 27 September 2007, <https://web.archive.org/web/20070927024802/http://transnistria.md/en/interview/0/126/5> (accessed 10 June 2020)

<sup>148</sup> D. Croleivet, Interview for Transnistria.md, 6 June 2008, <https://web.archive.org/web/20080606195700/http://www.transnistria.md/en/interview/0/127/5> (accessed 10 June 2020)

<sup>149</sup> 'The principal of the School 20', Interview for Transnistria.md, 6 June 2008, <https://web.archive.org/web/20080606220237/http://www.transnistria.md/en/interview/0/117/5> (accessed 10 June 2020)

<sup>150</sup> OSCE, press release: 'Linguistic cleansing underway in Transdnistria', 15 July 2004, <https://web.archive.org/web/20160218033937/http://www.osce.org/hcnm/56534> (accessed 10 June 2020)

<sup>151</sup> ECtHR, *Catan*, para. 50 and 55

authorities allowed the schools to resume their activities as foreign centres. This implied that Moldova paid a rent to the MRT for the facilities, as well as providing all the materials. The OSCE collaborated in transportation. The Bender school needed to move to new facilities, significantly worse-equipped<sup>152</sup>. In the case of Grigoriopol, the school was relocated to another nearby village, Dorotcaia, which is under the control of the constitutional authorities of the Republic. Chişinău provides daily transportation from Grigoriopol to the facilities in Dorotcaia and back, but their problems do not end there: the buses are frequently subject of unjustified stop-and-check procedures by the MRT authorities with the intention of discouraging them<sup>153</sup>. The measures taken by the MRT, despite the agreements with Moldova and the OSCE, are effective, and the number of children registered in Moldovan schools had dramatically decreased by 2009, compared to 2001: from 683 to 345 in Rîbnita, from 1751 to 901 in Bender and from 709 to 169 in Grigoriopol-Dorotcaia<sup>154</sup>.

To establish the jurisdiction of the respondent States the Court established an argument that had been hinted at *Ivanțoc*, although it did not appear explicitly due to the factual relation to *Ilaşcu*: after briefly commenting that Moldova's responsibility remains the same and that the Court will analyse whether it has discharged its obligations, the Grand Chamber announces that the situation proven in *Ilaşcu* and *Ivanțoc* is true *until Russia proves it wrong*<sup>155</sup>. Never again will the ECtHR confront the versions presented by the different actors, interview witnesses or consult other organizations: a presumption of Russia's jurisdiction over the MRT is created. This has allowed the Court to deal with new cases faster, as they are solved by the Committee or the Chamber at best, and jurisdiction is dealt with in a few lines that just guide the reader to the Grand Chamber cases. The approach has its danger, given Russia's lack of commitment in the court proceedings.

Regarding the specific facts of the case, the Court mentions that Article 2 of Protocol 1 protects the right 'to be educated in the official language of their country, which was also

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<sup>152</sup> *ibid*, para. 56

<sup>153</sup> *ibid*, para. 62

<sup>154</sup> *ibid*, para. 53, 58 and 63

<sup>155</sup> *ibid*, para. 119

their own mother tongue<sup>156</sup>. This sentence is of extraordinary interest, because it implicitly shows the limits of the Namibia exception, as a consequence of not recognising the MRT. The schools are in the territory of the Republic of Moldova, and therefore the official language is the official language of the Republic of Moldova – Moldovan in Latin script. In the next paragraph, the Court acknowledges that ‘it appears that the “MRT”’s language policy (...) was intended to enforce the Russification’ and that ‘there is no evidence (...) to suggest that the measures (...) pursued a legitimate end’. In two paragraphs, the ECtHR has acknowledged that the MRT can potentially take measures that constitute a legitimate interference in the rights of the citizens, although the conditions are not fulfilled here. However, to recognise the MRT as an authority able to implement a schooling system and to do so (or not) according to the Convention is not the same as recognising the MRT as a State: their legislation on languages (where Moldovan is admitted, albeit with Cyrillic script) is not accepted. Coherently with the Namibia exception, the activities of unrecognised entities are only accepted as long as it is strictly necessary to protect the rights of the people living under their power.

This case differs from the previous ones in that it does not conceptualise the existence of two forces (Russia executing MRT policies and Moldova alleviating their consequences) but three: the MRT is for the first time understood as an autonomous agent and both Moldova and Russia must act to discharge their responsibility. And while Moldova’s action to ensure the continuation of the school activities is assessed positively<sup>157</sup>, the Court is not convinced by Russia, despite the latter’s rejection of the MRT language policy and its role as a mediator. The ECtHR does not accept that a respondent State take the same neutral stance as its co-mediators, Ukraine and the OSCE<sup>158</sup>. Therefore the violation is attributed to Russia.

### *C) Mozer*

The last time the Grand Chamber issued a judgment on Transnistria was on 2016. Mr. Mozer is a Tiraspol-born Moldovan citizen of German ethnicity that was arrested on

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<sup>156</sup> *ibid*, para. 143

<sup>157</sup> *ibid*, para. 147

<sup>158</sup> *ibid*, para. 149-150.

charges of fraud under inhuman conditions, aggravated by his lung disease, untreated for most of the detention period. He was also denied access to his parents or a pastor, and the restriction was finally lifted, he was forced to speak Russian so that the guards would understand him. The applicant was finally released with economic confiscations and under prohibition to leave the city, an order he disobeyed moving to Chişinău and then to Switzerland, where he sought treatment and became an asylum seeker.

His family had tried to complain to the MRT, Moldova, Russia and the JCC. The Moldovan authorities were unable to help and the Russian ones forwarded every communication to the MRT, who rejected every request or appeal. These attitudes were maintained in the process before the ECtHR: Moldova claimed it had no means to corroborate the version of the applicant (owing to the absolute lack of collaboration by the MRT) and Russia was completely passive, making no statement beyond denying its jurisdiction.

Unlike in *Ilaşcu* and *Ivanțoc*, the application relies on the general conditions of the prisons in Transnistria, not on specific mistreatment directed against the applicant. This makes the case noteworthy, for while regarding *Ilaşcu* and his companions the Court had concluded there was an arbitrary treatment for political reasons, this does not create a precedent for every case where the MRT is involved. Only now does the ECtHR analyse whether the Namibia exception can be applied to the legal system as a whole, with an explicit comparison to its acceptance of remedies instituted in Northern Cyprus<sup>159</sup>.

The Court first analysed what information the respondent States have offered. Moldova 'commented briefly' that the MRT system was inspired by the Soviet Union and that it lacked impartiality, while Russia refused to make statements in the issue<sup>160</sup>. The Court also 'notes the scarcity of official sources of information concerning the legal and court system of the 'MRT' (...). Consequently, *the Court is not in a position to verify whether the 'MRT courts' and their practice fulfil the requirements mentioned above*'<sup>161</sup>. After refusing to analyse the system for practical reason, the Grand Chamber turns to the

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<sup>159</sup> European Court of Human Rights, *Mozer v. Moldova and Russia* [GC], no. 11138/10, 23 February 2016, para. 137.

<sup>160</sup> *ibid*, para. 146

<sup>161</sup> *ibid*, para. 147 (emphasis added)

circumstances of the case and finds two arguments: first, the split happened before Moldova joined the Council of Europe, and it is unlikely that the MRT undertook the same reforms that the constitutional authorities needed to adapt to the Convention<sup>162</sup>; second, the circumstances of the present case suggest that the detention was arbitrary, which connects with the findings of *Ilaşcu*<sup>163</sup> and the reports by media, NGOs and International Organisations (notably, the CPT and the UN Special Rapporteur on Torture)<sup>164</sup>. In conclusion, the MRT legal system does not qualify as 'established by law' in the meaning of the Convention. This is well-established case-law of the Grand Chamber, and all subsequent cases from the Transnistria saga will consider that the MRT acts breaching the ECHR.

As for the specific case, once more the ECtHR accepted that Moldova had done what could be reasonably expected to assist the applicant by investigating, quashing the judgment and addressing the Russian diplomacy. The violations of articles 3, 5.1, 8, 9 and 13 were attributed exclusively to the Russian Federation.

#### **5.4. The doctrine of the Transnistria saga**

##### *A) Broader context of the ECtHR and States of limited recognition*

The MRT is not the only case in which the ECtHR has dealt with a State with limited recognition within the borders of a State that is party to the ECHR. This section does not intend to analyse in detail every interaction between the ECtHR and those regimes, for the object of this thesis concerns only the MRT, but to discuss how they have shaped the case-law of the Court, impacting the Transnistria saga.

The most relevant (for it is discussed in *Ilaşcu*) is the Turkish Republic of Northern Cyprus (TNRC). Like Transnistria, it is a State created by an ethnic minority with the support of the kin State and has obtained very little recognition by the international community. However, unlike the MRT, the kin State recognises the new-born State as independent, while Russia has not recognised the MRT. The information about the legal

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<sup>162</sup> *ibid*, para. 148

<sup>163</sup> *ibid*, para. 149-150.

<sup>164</sup> *ibid*, para. 181

system of the TRNC is also public, and therefore the Court can discuss its constitutional system in more detail. This makes the reasoning in the TRNC judgments distinctly different to the arguments used in the MRT judgments. The international relevance of the TRNC is also different. The UN has been actively involved, to the point that a (failed) referendum in 2004 aimed to implement a plan designed by Secretary General Annan to reunite the island<sup>165</sup> and the TRNC is represented at the PACE<sup>166</sup>.

Given its recognition of the TRNC, Turkey denies any responsibility for the state of Human Rights in the island. In *Loizidou*, the ECtHR had to settle this question. It explained the Namibia exception, although it did not discuss the TRNC institutions in detail<sup>167</sup>. The article of the TRNC Constitution used to seize the property of the applicants was not considered a justified interference and Turkey was found in violation, given the presence of the Turkish army: as in the MRT cases, the overall control of the situation is enough to trigger the foreign State's responsibility, even without direct implication of its agents. Although the specific *Loizidou* case is still pending, the intervention of the ECtHR has prompted Turkey to try to redress this kind of situations, e. g. with Law no. 67/2005<sup>168</sup>. It is worth mentioning that Cyprus is not a respondent State in the case, unlike Moldova in the Transnistria saga: the reason is the partial collaboration between the constitutional authorities of Moldova and the MRT leadership, which leave the door open for the responsibility of Moldova (as will be discussed when analysing other cases from the saga).

The other case that must be considered is *Cyprus v. Turkey*, because it sets a very important difference between the TRNC and the MRT regarding the extent to which the Namibia exception is applied. As commented above, even though the Government of

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<sup>165</sup> A. de Zayas, 'The Annan Plan and the Implantation of Turkish Settlers in Northern Cyprus', in K. Melakopidēs, A. K. Aimilianidēs, G. Kentas (eds.): *The Cyprus Yearbook of International Relations 2006*, Nicosia, Cyprus Institute of Mediterranean, European & International Studies – Power Publishing, 2006, p. 163

<sup>166</sup> Ministry of Foreign Affairs of the Turkish Republic of Northern Cyprus: Relations with the Parliamentary Assembly of the Council of Europe, <https://mfa.gov.ct.tr/foreign-policy/international-organisations/council-of-europe/pace/> (accessed 10 June 2020)

<sup>167</sup> ECtHR: *Loizidou* (merits), para. 85-86

<sup>168</sup> Council of Europe: Secretariat of the Committee of Ministers, Communication from the Turkish authorities (30/05/2018) concerning the cases of XENIDES-ARETIS and LOIZIDOU v. Turkey (Applications No. 46347/99, 15318/89) [DH-DD(2018)559] 1318th meeting (June 2018) (DH) -

Northern Cyprus is not a party in the process, the Court has access to information on the system and proceedings that take place there. Unlike in *Loizidou*, the system is examined here and the conclusion is that to certain extent TRNC courts can be understood as courts established by law. The practical conclusion is that the inhabitants of the TRNC must exhaust the domestic remedies offered to them by the local authorities before lodging a complaint before the ECtHR<sup>169</sup>. This way, unlike in Transnistria, the local courts are part of the Convention system. The conventional rights of the inhabitants are guaranteed and in case of violation the responsible State collaborates with the non-recognised State to redress it. Therefore, regardless of the results of each individual case, execution and compliance in the TRNC are *possible*.

Regarding Georgia, the Court stated in *Assanidze* that the State is responsible for violations occurred within its territory, no matter which entity is responsible for it or its compliance with the central government<sup>170</sup>. The case concerned the Autonomous Republic of Ajaria; although not a separatist entity, the Georgian authorities depend largely on the active collaboration of the local government to exercise jurisdiction. Ajaria is generally compliant with the Georgian constitutional order (hence the difference with the MRT), but it refused to release a prisoner after its judgment was quashed by the Supreme Court of Georgia. The applicant was freed the day after the ECtHR judgment was issued, showing the impact of the Court beyond the formal channels of execution.

A closer case to the MRT is that of Abkhazia and South Ossetia, both within Georgia according to most of the international community. These self-proclaimed States are also supported by Russia and are the only States (with Nagorno-Karabakh) to recognise the MRT – however, unlike Transnistria, they are recognised by Russia. Although the conflict that led to their recognition was already object of analysis by the ECtHR, these specific territories were not the main object of the proceedings<sup>171</sup>. Their status is central to the case confronting Georgia and Russia currently pending before the Grand Chamber. The

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<sup>169</sup> European Court of Human Rights: *Cyprus v. Turkey* (merits) [GC], no. 25781/94, 10 May 2001, para. 102.

<sup>170</sup> European Court of Human Rights: *Assanidze v. Georgia* [GC], no. 71503/01, 8 April 2004, para. 144-150.

<sup>171</sup> European Court of Human Rights: *Georgia v. Russia (I)* [GC], no. 13255/07, 3 July 2014.

latest update on this case is the decision on the admissibility, where Russia and Georgia confront their views who has effective control over Abkhazia, South Ossetia and their surroundings. The Court's answer is limited to observing that it cannot rule out Russia's jurisdiction at this stage<sup>172</sup>. From the text of the decision there is no reason to expect that the final judgment will change the criteria employed in the case-law of the ECtHR regarding Transnistria (regardless of what is finally decided on Abkhazia and South Ossetia).

The case of Nagorno-Karabakh, on the other hand, is extremely similar. It also involves a region that declared independence (Republic of Artsakh) from the Soviet Union almost at the same time as the sovereign State (Azerbaijan) and went to war with the support of the kin State (Armenia), with a ceasefire that stagnates the situation without solving it and no recognition by the kin State. In *Chiragov*, the Court explicitly uses *Catan* as a model to establish the jurisdiction of Armenia, based on the high degree of collaboration between the armies of the State and the regime (although the numbers are disputed) and the economic dependency on Armenia (although other sources, such as the USA, are recognised)<sup>173</sup>. Considering that the facts are more difficult to prove than in Transnistria, five separate opinions were written.

On the *same date*, in the interesting case of *Sargsyan*, the Court found that the area of Gulistan, despite being situated in the Republic of Nagorno-Karabakh, was on the Line of Contact between the two armies. Although both Armenia and Azerbaijan denied being able to exercise their jurisdiction over it, the Court found that the presumption that a State is responsible for protecting the ECHR through all of its territory had not been rebutted, unlike in the case where the applicants were *clearly* under the authority of the rebel regime. Azerbaijan was the only respondent State. It is interesting to note that the Court relied on both *Ilaşcu* and *Catan* (among other non-MRT cases)<sup>174</sup>, but it did not mention

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<sup>172</sup> European Court of Human Rights: *Georgia v. Russia (II)* [GC] (dec.), no. 38263/08, 13 December 2011, para. 63-68.

<sup>173</sup> European Court of Human Rights: *Chiragov v. Armenia* [GC], no. 13216/05, 16 June 2005, para. 168-187

<sup>174</sup> European Court of Human Rights: *Sargsyan v. Azerbaijan* [GC], no. 40167/06, 16 June 2015, para. 126-131

any of the cases that we will discuss regarding the JCC, which would be more useful to discuss the presence of both armies.

The case of Kosovo is not comparable. While some cases have been brought before the Court against Serbia, the problem has been the interpretation or applicability of Serbian law regarding inhabitants of Kosovo<sup>175</sup>, not an inability to protect the Convention due to the intervention of an external power. The fact that the Kosovar legislation was accessible to the ECtHR, and that its constitution grants direct effect to the ECHR<sup>176</sup>, eliminate all the obstacles the Court had to deal with regarding Transnistria.

The conflict in Crimea has also reached Strasbourg, but due to its complex nature the jurisdiction over the cases affected by it has been relinquished in favour of the Grand Chamber. The case is currently pending after the hearings of September 2019<sup>177</sup>.

The analysis of the ECtHR's case-law on self-proclaimed States shows that the principles applied to them are consistent: on the basis of territoriality, the jurisdiction of a third State with overall control can be accepted, and this does not eliminate the jurisdiction of the first State unless it is proven that it prevents it completely from acting. The actions of the self-proclaimed authority are attributed to the State: if they are in breach of the Convention, the respondent State is found in violation of the Convention; but if they eliminate or compensate the violation in line with the case-law of the Court, it is considered an effective remedy with equal standing to those established by the respondent State in its national law. What makes the MRT saga unique is the fact that, by principle, both States are asked to respond, given Moldova's ties with the MRT authorities. While the theory remains the same, it is the only case where this happens. In the other cases either full responsibility is attributed to the foreign State (Turkey for the TRNC, Armenia

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<sup>175</sup> See, e.g.: European Court of Human Rights: *Grudić v. Serbia*, no. 31925/08, 17 April 2012; European Court of Human Rights: *Stanković and Trajković v. Serbia*, no. 37194/08 and 37260/08, 22 December 2015; European Court of Human Rights: *Rakić and Others v. Serbia*, no. 47460/07 and others, 5 October 2010.

<sup>176</sup> Constitution of Kosovo (passed on 15 April 2008, entered into force on 15 June 2008), as offered in translation by the Constitutional Commission, art. 22 <http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf> (accessed 10 June 2020)

<sup>177</sup> European Court of Human Rights: 'Grand Chamber hearing on inter-State case Ukraine v. Russia (re Crimea)', Press Release ECHR 303 (2019), 11 September 2019

for Nagorno-Karabakh, presumably Russia for South Ossetia and Abkhazia, if the argument put forward by Georgia is accepted in the currently pending Grand Chamber judgment) or the sovereign State is responsible for the situation in the rebel territory (Georgia for Ajaria, Azerbaijan for the zones of Nagorno-Karabakh under the influence of its army). In any case, it has already been established in a previous section that despite the collaboration, the presence of Moldova on Transnistrian soil is not strong enough to carry out its execution duties.

#### *B) Criticism to the Transnistria doctrine*

There are three main sources of criticism to the reasoning of the Court on jurisdiction: the respondent States, the separate opinions of the ECtHR itself and the scholars. The attitude of the States will be analysed in its own section, given that it informs their intervention in the execution process.

Among scholars, the Court's varying approach has been the object of intense debate. For some authors there is an inconsistency between the NATO on Serbia (*Banković*) and the jurisdiction to the external State regarding the self-proclaimed republics<sup>178</sup>. Others find that the different attitude of respondent States justifies the approach, contrasting Cyprus' belligerence towards the TRNC with Moldova's acquiescence towards the MRT<sup>179</sup>. On this point I share the opinion of Poalelungi, the former judge in representation of Moldova that had participated in the deliberations of several cases. No longer serving at the ECtHR but as President of the Constitutional Court of Moldova, he had an opportunity to be more explicit in his views when he contributed to the *Liber amicorum* dedicated to Guido Raimondi with a text on the positive obligation of the MRT authorities to recognise judgments. Poalelungi takes the position that Moldova's behaviour towards Transnistria cannot be considered acquiescent or supportive.

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<sup>178</sup> Mole, p. 76; also A. Ispolinov, 'State responsibility and extra-territorial application of the European Convention on Human Rights. Extra-Territorial Effect of the Convention on Human Rights and Fundamental Freedoms', in Konovalov, A. (ed.), *Case-law of the European Court of Human Rights – Extraterritorial jurisdiction: Looking for solutions*, special issue, Moscow, International and Comparative Law Research Center, 2018, p. 55

<sup>179</sup> Lagerwall, pp. 29-30

The Court's case-law provides, that in case of a *de facto* illegal occupation of a sovereign territory, there should be a distinction between the recognition of illegal occupation and recognition of certain acts of those authorities in the favour of individuals, who otherwise would be disadvantaged or suffer. The first idea is not acceptable, whereas the second is inevitable<sup>180</sup>.

The true source of parallel analysis is the myriad of separate opinions that have plagued the Transnistria saga, showing how even the experts appointed as judges in Strasbourg are not completely sure of the approach needed.

In *Ilaşcu*, the first partly dissenting opinion (by Judge Casadevall, joined by Ress, Bîrsan, Tulkens and Fura-Sandström) differs with the decision to establish Moldova's responsibility from May 2001 and suggests that it should start in 1997, with Moldova's accession to the Convention. While the judgment concluded that the Republic had lost its interest in the case after Mr. Ilaşcu, the most prominent of the applicants, was released, the opinion states that the efforts supposedly undertaken by Moldova were only nominal and lacked any mechanism aimed at making them effective. For example, they mention the judgment by the Supreme Court of Moldova quashing the judgment by the 'Supreme Court' of the MRT, considering it was a useless declaration and that the Moldovan authorities never acted upon it; they also cast doubts upon Moldova's assertions that the investigations went as far as it was possible<sup>181</sup>. One of the judges who supported this opinion (Ress) wrote his own addendum, trying to turn the argument around and frame some positive obligations, but he does not go beyond vague formulations such as 'continue to take all possible and legally acceptable measures to regain control on its territory'<sup>182</sup>. This point is interesting and would help to create a predictable model of how Moldova is supposed to act regarding violations of human rights in Transnistria.

A different line of thought is presented by Sir Nicolas Bratza (joined by Judges Rozakis, Hedigan, Thomassen and Pantîru). They consider that Moldova should not bear responsibility for the violations, as the applicants could not be within its jurisdiction without the collaboration of the MRT authorities and Moldova has not been acquiescent

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<sup>180</sup> Poalelungi, p. 759

<sup>181</sup> ECtHR, *Ilaşcu*, partially dissenting opinion by Judge Casadevall and others, para. 9.

<sup>182</sup> ECtHR, *Ilaşcu*, partially dissenting opinion by Judge Ress, para. 4.

regarding the three applicants in prison<sup>183</sup>. However, they agree that Moldova breached Article 34 by hampering the applicants' access to the Court<sup>184</sup>. Judge Loucaides agreed with them and added that it would be inconsistent with *Banković* to require such exigent diplomatic measures after establishing as case-law that a bombing can be out of the jurisdiction of a State for spatial reasons<sup>185</sup>.

Next goes the first dissenting opinion by Judge Kovler, but for reasons of clarity I will postpone its analysis.

In *Catan*, judges Tulkens, Vajić, Berro-Lefèvre, Bianku, Poalelungi and Keller signed a partially dissenting opinion arguing that the complaints under articles 8 and 14 should be examined separately (the judgment had declared that the facts could only be analysed in the light of Article 2 of Protocol No. 1). This opinion is technical in nature; it is mentioned here to reflect the dissensions in the Grand Chamber, but it does not offer an alternative reading of the Transnistrian conflict.

Finally, *Mozier* includes the concurring opinion of Judge López Guerra, who is worried about the implications of considering the mere existence of the legal system of the MRT a violation of the Convention:

[I]f taken to its logical consequences, the Court's finding implies that any arrest or detention order issued in respect of any person, for any reason, by the "MRT" authorities (even in cases of serious crimes or endangerment to society, persons or property) should be considered contrary to the Convention, in view of the Grand Chamber's assessment of a general lack of judicial independence. The reasoning resulting in this extreme conclusion (one which is unavoidable according to the terms of the judgment) is unsupported by the evidence and unnecessary for the final finding of a violation of the applicant's Article 5 § 1 rights, and should therefore have been excluded from the text of the Grand Chamber judgment<sup>186</sup>.

López's concern is logical. However, he considers it as a hypothesis, when the Court has already produced enough case-law in the following four years to check whether he was

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<sup>183</sup> ECtHR, *Ilaşcu*, partially dissenting opinion by Sir Nicolas Bratza and others, para. 26.

<sup>184</sup> *ibid*, para. 28.

<sup>185</sup> ECtHR, *Ilaşcu*, partially dissenting opinion by Judge Loucaides.

<sup>186</sup> ECtHR, *Mozier*, concurring opinion of Judge López Guerra

right. To answer this point we need an empirical analysis of each case, which is exactly what Figure B and the corresponding section 5.5 do.

Now, back to the Russian judges. Anatoly Kovler signed a 16 page-long dissenting opinion to *Ilașcu*, where he counter-argued against all the main points of the judgment. He starts with a historical analysis, criticising the Court for limiting itself to a narrative that starts in 1990 when in other cases they have gone back as far as the 14<sup>th</sup> century<sup>187</sup>, the same chosen by Kovler to start his account in 1360, with the creation of the Principality of Moldavia. The judge follows the territorial changes of Bessarabia amongst the different empires, including the cultural influence of both Russia and France (via 19<sup>th</sup> century Romania). The main point of his historical criticism is that Transnistria is portrayed as a breakaway region comparable to Northern Cyprus without discussing the very specific context of the fall of the USSR; it is comparable not only to the fifteen Soviet Republics that proclaimed their independence, but also to Gagauzia, which the judgment does not study. Under this light, Transnistria does not break away from Moldova, it *refuses to join* Moldova. Finally, Kovler deplores the fact that the Court never analyses the applicants' actual participation in the events. Reportedly, Ilașcu had been organising terrorist attacks and wrote the words 'we are capable of organising a huge bloodbath'<sup>188</sup>.

Then the judge goes into the problem of jurisdiction, suggesting to distinguish Russia's responsibility (engaged by its military actions) from a supposed exercise of jurisdiction developed ever since. He also doubts of the accuracy of the statements on the supposed treatment of favour from Russia towards the MRT or the possibility of holding Russia responsible for the actions of the Soviet Union in these specific circumstances. The next section contains Kovler's strongest accusation: the Court has used stolen evidence<sup>189</sup>. He finishes by wondering how the judgment can be enforced – the Court's well-established case law indicates that 'the Convention does not require the Contracting Parties to impose

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<sup>187</sup> ECtHR, *Ilașcu*, dissenting opinion of Judge Kovler, II

<sup>188</sup> *ibid*

<sup>189</sup> *ibid*, IV

its standards on third States or territories'<sup>190</sup>. The MRT doctrine would require Russia to establish a condominium with Moldova over Transnistria<sup>191</sup>.

Kovler took the habit of adding a dissenting opinion to all the Transnistrian cases that reached the Chamber referring to his original opinion on *Ilaşcu*. His successor, Dmitry Dedov, continued the trend. While most of them are brief and add no new information, those added to the key cases deserve a comment. In *Ivanțoc*, we find the most explicit in-judgment accusation against the Court of anti-Russian political leaning. Kovler asserted that by using the different degree of power of Moldova and Russia as an argument,

[T]his linking of individual cases with global geo-strategic problems will become a kind of practice of the Court, with the danger that its role will mutate from that of a judicial body to that of a European Security Council<sup>192</sup>

Dedov wrote his first dissenting opinion on an MRT case in *Mozor*. Although he mentions Kovler's precedent, through the text he compares his arguments to those offered by Judge Pinto de Albuquerque in a dissident opinion to *Chiragov*. After discussing the problem of jurisdiction and presenting the principle of self-determination, he makes a stronger statement than his predecessor: against Kovler's desire to understand the conflict as stemming from multiple causes, he considers that '[t]he conflict was caused by ignoring the minority's fundamental right to use their native language in official correspondence with the Moldovan authorities'<sup>193</sup>.

From then on, the only separate opinions were those of the Russian judges, with the exception of Judge Motoc's concurring opinion in *Pisari*, which had to do with the difference between jurisdiction and responsibility for an internationally wrongful act (and adds nothing to the research question of this thesis).

While one can clearly identify what might be called a 'Russian doctrine' expressed through the dissenting opinions of Judges Dedov and Kovler, the same cannot be said about Moldova. It is true that in *Ilaşcu*, Judge Pantîru joined sir Nicolas Bratza's partly

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<sup>190</sup> European Court of Human Rights, *Drozdz and Janousek v. France and Spain*, no. 12747/87, 26 June 1992, para. 110

<sup>191</sup> ECtHR, *Ilaşcu*, dissenting opinion of Judge Kovler, VI

<sup>192</sup> ECtHR, *Ivanțoc*, dissenting opinion of Judge Kovler

<sup>193</sup> ECtHR, *Mozor*, dissenting opinion by Judge Dedov, para. 11

dissenting opinion to argue that Moldova was not responsible for the violations, but the opinion lacks the development and depth that Kovler gave to his, constituting a real parallel judgment. Furthermore, it was not followed in the subsequent *Ivanțoc* judgment, where Pantîru was a sitting judge.

Pantîru was substituted by Poalelungi, who also joined a dissenting opinion in *Catan*. As the text dealt with the recognition of violations of Article 8 and 14, not with to whom these violations shall be attributed, it fails to create a distinct identity of the separate opinions signed by the judges representing Moldova.

The opinions expressed by Judges Pantîru, Poalelungi, and those who were not appointed by any of the respondent States are referred to the specific cases in which they are framed and do not constitute an alternative theory to the resolution of the Transnistrian saga. Only the Russian doctrine can be given such a consideration. For this reason they deserve to be explicitly considered as an alternative with potential consequences on the execution process. It is important to remind the reader that the judge representing Russia does not express the opinions of the Russian government (and even less the MRT), but Dedov and Kovler decided to frame their opinions in a cultural setting that in this specific case is shared by Russia and the MRT, as the history of the conflict shows: their dissenting opinions are not only a different legal construction, but a whole different narrative. To prove the supposed bad faith of the majority, Kovler pointed out examples where the Court discussed the 14<sup>th</sup> century – he could have gone further in time while staying closer to the topic, as in *Assanidze* the Court starts the history of Ajaria in the 1080s<sup>194</sup>. Both he and Dedov state implicitly or explicitly in several passages that the Court is politically guided and biased against Russia. As the MRT identifies itself as a part of Greater Russia, there is no doubt the authorities beyond the Dniester would share this opinion. The judgments are perceived as written from the point of view of Chișinău, and it is difficult for a human rights body to act if it is not perceived as impartial. The school cases are proof that the cultural rift cannot be overlooked in the Transnistrian conflict.

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<sup>194</sup> ECtHR, *Assanidze*, para. 100.

The majority chose a seemingly neutral narrative that actually lays the ground for reading the conflict under a light favourable to Moldova. This is achieved by starting the narration after the fall of the Soviet Union; by presenting Transnistria as a breakaway republic and not mentioning its point of view that it is actually avoiding to join a *new* Moldovan State; by not mentioning the past of the Ilaşcu group; by not explaining that the Latin alphabet was imposed in Moldova by the Romanian State in the 1920s<sup>195</sup>. However, the narrative presented by Kovler is equally biased. While he explains the territorial changes over history that the majority overlooked he does not distinguish between the MASSR and the MSSR<sup>196</sup> (that is, the artificial creation of Transnistria). While he discusses the French (Latin) influence on 19<sup>th</sup>-century Romania, he does not mention the Soviet Russification policies. He also uses the concepts 'Slavs' and 'Russians' interchangeably, while the contemporary sources state that the Slavic cultural influence on Moldova in the 17<sup>th</sup> century was Ruthenian and mainly Polish<sup>197</sup>. It is interesting to note that he writes about historical events and leaders in detail, about Peter the Great and the Moldovan-Russian poet Antiokh Kantemir, which add little to his argument, but he fails to mention the one historical figure that took the decision, first, to create Transnistria as a territorial unit (MASSR) in the 1920s, and then to unify it with Bessarabia in the 1940s – Iósif Stalin<sup>198</sup>.

The objective of this section is not to establish an official historical account of Transnistria, but to show that both the majority (which reflects the Moldovan narrative) and the dissenting opinions (which reflect the Russian narrative) avoid mentioning the facts that would not cast a favourable light on their side. It happens too frequently to be considered unintentional. Even though the official position of the Court is that there is no battle over the narrative, the truth is that there is. When there are difficulties to implement the judgments, and there is no culture of the rule of law, the Court cannot afford to act as a coercive body whose rulings will be obeyed<sup>199</sup>, but rather as an element of diplomacy, that, through its prestige, must attract the MRT authorities to compliance with the

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<sup>195</sup> Haynes, pp. 106-107.

<sup>196</sup> ECtHR, *Ilaşcu*, dissenting opinion by Judge Kovler, II.

<sup>197</sup> Haynes, p. 103.

<sup>198</sup> Waters, p. 190; also Haynes, p. 103.

<sup>199</sup> Mole, p. 93.

Convention; a basic element to bring two parties to a negotiation table is empathy for their views.

Another point of the 'Russian doctrine' is the accusation of being lenient with Moldova, whose positive duties are never clear and almost always validated. This criticism is shared by other non-Russian separate opinions, and no arguments have been presented against it. Even without varying the results, the Court could be more explicit in describing what the threshold is, in means or in results, especially in repetitive cases.

Regardless of which approach is more correct under international law, which falls out of the scope of the thesis, the separate opinions are useful to explain, at least on the cultural side, why there is such a rejection of the Court by the MRT.

### **5.5. Study of the Transnistria saga**

This section provides an analysis of the Transnistrian cases until July 2020 and classifications from several points of view. The 50 cases considered are those where the main events happen on Transnistrian soil - there are cases against Moldova that affect Transnistria, but they are too different to extract common conclusions. They are briefly commented in the section on Moldovan execution. The cases can be found in Figure B below in chronological order. I am using the last available document for each case, which is not always a judgment. Those which are still in communication (i.e. notified to the parties) appear at an earlier date than those on which a judgment have been rendered, even if they were accepted by the Court at similar dates. Judgments by the Grand Chamber take more time than judgments by a Chamber, which in turn normally take more time than a judgment by a Committee or a decision by a single judge declaring the complaint inadmissible. Therefore precedence in the figure does not imply precedence in the facts; order by precedence in the facts was discarded because it is difficult to compare a violation that spans over decades with a specific event, especially when several actions constitute one case or similar cases of people who do not know each other are put together.

Some parts of the data are the object of a written comment to analyse the consistency of the doctrine of the Court and to explore different approaches that could be taken.

<sup>200</sup>	<b>Ilaşcu and Others</b>	<b>Kireev</b>	<b>Ivanțoc and others</b>	<b>Catan and Others</b>	<b>Totchi and Others</b>
NUMBER	48787/99	11375/07	23687/05	43370/04, 8252/05, 18454/06	8833/10
RESPONDENT STATES	Moldova, Russia	Moldova, Russia	Moldova, Russia	Moldova, Russia	Moldova, Russia, Ukraine
DATE OF JUDGMENT	8 July 2004	1 July 2008	15 November 2011	19 October 2012	23 October 2013
KIND OF JUDGMENT	Grand Chamber	Decision	Chamber	Grand Chamber	Communication
VIOLATION	3, 5, 34 (both)	Inadmissibility	3, 5, 8, 13 (Russia)	2 Protocol 1 (Russia)	-
CASE CLASSIFICATION	Detention	Sui generis (change in value of savings)	Detention	School	Sui generis (negligence in labelling)
(MAIN) CITY	Tiraspol	Bender	Tiraspol	Ribnița, Bender, Grigoriopol-Dorojceata	Bender
EXECUTION GROUP	Leading	-	Ilaşcu	Leading	-
STATUS OF EXECUTION	Closed (6 March 2014)	-	Closed (6 March 2014)	Pending	-
DIRECT INVOLVEMENT OF INTERNATIONAL ACTORS	OSCE	-	OSCE	OSCE	-
OTHER RELEVANT FACTS	(see section in text)	Moldova and Russia not responsible for MRT legislation	Prolongation of facts in Ilaşcu	See section	-

<sup>200</sup> FIGURE B. The 50 cases of the Transnistria saga

	<b>Bobeco and others</b>	<b>Pisari</b>	<b>Mozer</b>	<b>Turturica and Casian</b>	<b>Paduret</b>	<b>Erionenco</b>
NUMBER	30003/04	42139/12	11138/10	28648/06 and 18832/07	26626/11	42224/11
RESPONDENT STATES	Moldova, Russia	Moldova, Russia	Moldova, Russia	Moldova, Russia	Moldova, Russia	Moldova, Russia
DATE OF JUDGMENT	23 October 2013	21 April 2015	23 February 2016	30 August 2016	9 May 2017	9 May 2017
KIND OF JUDGMENT	Committee	Chamber	Grand Chamber	Chamber	Chamber	Chamber
VIOLATION	2 Protocol 1 (Russia)	2 (Russia)	3, 5.1, 8, 9, 13 (Russia)	1 Protocol 1 (Russia)	1 Protocol 1 (Russia)	3, 4.1, 8, 1 Protocol 1, 13, 34 (Russia)
CASE CLASSIFICATION	School	Death by soldier	Detention	Car case	Car case	Detention (fraud)
(MAIN) CITY	Bender	Piñita (Moldova)	Tiraspol	Lunga (MRT) and Corjova (Moldova)	Cocieri (Moldova) and Dubăsari (MRT)	Sloboza (MRT)
EXECUTION GROUP	Catan	Leading	Leading	Mozer	Mozer	Mozer
STATUS OF EXECUTION	Pending	Pending (although Russia has paid)	Pending	Pending	Pending	Pending
DIRECT INVOLVEMENT OF INTERNATIONAL ACTORS	OSCE	JCC	ICRC	-	-	-
OTHER RELEVANT FACTS	School not specified	Russia accepts jurisdiction Concurrent opinion (Motoc)	See section	Corjova: former district of Dubăsari (now MRT)	Cocieri is under constitutional control despite being on the Eastern bank	Applicant freed for unspecified reasons

	<b>Vardanean</b>	<b>Apcov</b>	<b>Soyma</b>	<b>Draci</b>	<b>Braga</b>	<b>Alimpiev</b>
NUMBER	22200/10	13463/07	1203/05	5349/02	76957/01	48802/08
RESPONDENT STATES	Moldova, Russia	Moldova, Russia	Moldova, Russia, Ukraine	Moldova, Russia	Moldova, Russia	Moldova, Russia
DATE OF JUDGMENT	30 May 2017	30 May 2017	30 May 2017	17 October 2017	17 October 2017	26 November 2017
KIND OF JUDGMENT	Chamber	Chamber	Chamber	Chamber	Chamber	Communication
VIOLATION	5.1, 6.1, 8 (Russia)	3, 5.1, 6.1 (Russia)	5.1 (Russia)	3, 5.1 (Russia)	3, 5.1, 34 (both)	-
CASE CLASSIFICATION	Detention (espionage)	Detention (robbery)	Detention (murder)	Detention (fraud)	Detention (fraud, incitation to robbery)	Detention (alleged bribe)
(MAIN) CITY	Tiraspol	Tiraspol	Tiraspol	Tiraspol	Râbnîța (possibly misspelling of Rîbnîța), Chișinău	Tiraspol
EXECUTION GROUP	Mozet	Mozet	Mozet	Mozet	Mozet	-
STATUS OF EXECUTION	Pending	Pending	Pending	Pending	Pending (Moldova has paid and updated legislation)	-
DIRECT INVOLVEMENT OF INTERNATIONAL ACTORS	OSCE, CoE, EU, USA	-	OSCE	-	-	-
OTHER RELEVANT FACTS	Journalists accused of being Moldovan spies. Freed after pressure	-	Ukrainian national. Could not be extradited for lack of treaty	Canadian applicant taken to MRT against his will from Ukraine. Amnesty	Applicant transferred to a Moldova-controlled hospital. Later freed	Amnesty

	<b>Pocasovschi and Mihalai</b>	<b>Mangr and Others</b>	<b>Versilov</b>	<b>Halabudenco</b>	<b>Sandu and Others</b>	<b>Stomatii</b>
NUMBER	1089/09	50157/06	28750/11	73942/17	21034/05 and 7 others	69528/10
RESPONDENT STATES	Moldova, Russia	Moldova and Russia	Moldova and Russia	Moldova and Russia	Moldova and Russia	Moldova and Russia
DATE OF JUDGMENT	29 May 2018	17 July 2018	18 September 2018	11 July 2018	11 July 2017	18 September 2018
KIND OF JUDGMENT	Chamber	Chamber	Decision	Communication	Chamber	Chamber
VIOLATION	3, 13 (Moldova)	3, 5.1, 13 (Russia)	Inadmissibility	-	1 Protocol 1 and 13 (Russia)	2 (Russia)
CASE CLASSIFICATION	Detention	Detention (kidnapping)	Detention	Detention (accepting bribes)	Road case	Death by soldier
(MAIN) CITY	Bender	Tiraspol	Bender	-	Dorofcaia, Priita, Molovata Noua, Pohrebca and Cocieri	Camenca
EXECUTION GROUP	<i>ID. v. Moldova</i> (unrelated to MRT)	Mozet	-	-	Mozet	Not grouped
STATUS OF EXECUTION	Closed (6 June 2019)	Pending	-	-	Pending	Pending
DIRECT INVOLVEMENT OF INTERNATIONAL ACTORS	-	Russian Federation	OSCE	-	-	-
OTHER RELEVANT FACTS	Unanimity Prison controlled by Moldova in MRT city	Investigating for Moldova. Freed when Russia guaranteed they would stop kidnapping	Russia: lodged out of time, no evidence of Moldovan responsibility	-	MRT roads cross Moldova-proper lands	Court confronts facts provided by MRT authorities

	<b>Kolobychko</b>	<b>Beloziorov and Molodtova</b>	<b>Manole and Postica</b>	<b>Canter and Magaleas</b>	<b>Sobco and Ghent</b>	<b>Cotofan</b>
NUMBER	36724/10	3368/12	4711/07	7529/10	3060/07 45533/09	5659/07
RESPONDENT STATES	Moldova, Russia, Ukraine	Moldova and Russia	Moldova and Russia	Moldova and Russia	Moldova and Russia	Moldova and Russia
DATE OF JUDGMENT	18 September 2018	17 January 2019	16 May 2019	18 June 2019	18 June 2019	18 June 2019
KIND OF JUDGMENT	Chamber	Decision	Communication	Committee	Committee	Committee
VIOLATION	2 (Russia)	Inadmissibility	-	6.1 (Russia)	6.1 (Russia)	1 Protocol 1, 13 (Russia)
CASE CLASSIFICATION	Death by soldier	Detention (attacking the ...)	Detention	Detention (murder)	Labour proceedings	Car case
(MAIN) CITY	Tiraspol (last known location)	Dubăsari	MRT (unspecified)	Slobozia and Parcani (MRT)	Tiraspol and Slobozia	Coriova
EXECUTION GROUP	Not grouped	-	-	Not grouped	Not grouped	Not grouped
STATUS OF EXECUTION	Pending	-	-	Pending	Pending	Pending
DIRECT INVOLVEMENT OF INTERNATIONAL ACTORS	-	-	-	-	-	Russian peacekeepers
OTHER RELEVANT FACTS	The applicant's family had tried to complain to Ukraine for unspecified reasons	The applicant died and his mother did not want to continue the action	Lawyers representing applicants before the ECtHR arrested by Russian soldiers	Applicants released for unspecified reasons	Not criminal case, but proceedings over dismissal	-

	<b>Beșlagă</b>	<b>Panteleiciuc</b>	<b>Antonov and Others</b>	<b>Șutac</b>	<b>Dobrovitskaya and Others</b>	<b>Golub</b>
NUMBER	48108/07	57468/08	315/10 1153/10 1158/10	3372/12	41660/10 and 5 more	48020/12
RESPONDENT STATES	Moldova and Russia	Moldova and Russia	Moldova and Russia	Moldova	Moldova and Russia	Moldova and Russia
DATE OF JUDGMENT	2 July 2019	2 July 2019	2 July 2019	30 August 2019	3 September 2019	16 September 2019
KIND OF JUDGMENT	Committee	Committee	Committee	Communication	Committee	Communication
VIOLATION	3, 5.1, 6.1, 10, 13 (Russia)	3, 6 (Russia)	3, 5.1, 8, 13 (Russia)	-	3, 5.1, 6.1, 2 Protocol 4, 13 (Russia)	-
CASE CLASSIFICATION	Detention (political activity)	Detention	Detention (drugs, murder, putting life of agents at risk)	Sui generis (lack of access to social benefits)	Detention	'Detention'
(MAIN) CITY	Corjoova	Grimăncăuți (Moldova) and Varnita (MRT)	Tiraspol and Lunga (MRT)	MRT (not specified)	Several in MRT	MRT (Unspecified)
EXECUTION GROUP	Not grouped	Not grouped	Not grouped	-	Not grouped	-
STATUS OF EXECUTION	Pending	Pending	Pending	-	Pending	-
DIRECT INVOLVEMENT OF INTERNATIONAL ACTORS	-	-	OSCE (denied access)	-	-	-
OTHER RELEVANT FACTS	Applicant running for mayor of Corjoova (Moldova, but frequently intervened by MRT)	Arrested for 3 days. Based in Moldova, sells his products in MRT	Mix of 3 cases. 3 <sup>rd</sup> app. put MRT agents' lives at risk by stealing roses from a public park	-	The Court proves the state of prisons relying on the applicants, without reports	The applicant claims that the compulsory military service is a deprivation of freedom

	<b>Denisenko</b>	<b>Berzan and Others</b>	<b>Iovcev and others</b>	<b>Babchin</b>	<b>Negruta</b>	<b>Uniflov</b>
NUMBER	33842/10	56618/08 and 9 others	40942/14	55698/14	3445/13	80882/13
RESPONDENT STATES	Moldova and Russia	Moldova and Russia	Moldova and Russia	Moldova and Russia	Moldova and Russia	Moldova and Russia
DATE OF JUDGMENT	16 September 2019	16 September 2019	17 September 2019	17 September 2019	17 September 2019	17 September 2019
KIND OF JUDGMENT	Communication	Committee	Committee	Committee	Committee	Committee
VIOLATION	-	5.1, 3, 13 (Russia)	2, 5, 8 (Russia)	1, 3, 1 Protocol 1, 13 (Russia)	3, 5.1, 1 Protocol 1 (both)	3, 13 (Russia)
CASE CLASSIFICATION	Civil proceedings	Detention	School	Detention (fraud)	Detention (corruption)	Detention (drugs)
(MAIN) CITY	MRT (Unspecified)	Tiraspol, Grigoriopol, Corjova, Bender, Ternoara, Butor	Tiraspol, Grigoriopol-Dorolcaia, Dubăsari-Corjova	Bender	Rezina (Moldova) and Hlănaia (MRT)	Tiraspol
EXECUTION GROUP	-	Not grouped	Not grouped	Not grouped	Not grouped	Not grouped
STATUS OF EXECUTION	-	Pending	Pending	Pending	Pending (Moldova has paid)	Pending
DIRECT INVOLVEMENT OF INTERNATIONAL ACTORS	-	Peacekeeping forces	OSCE	-	-	-
OTHER RELEVANT FACTS	-	One of the applicants in Corjova, mr. Corjofan, is the same as in the case with that name.	One of the schools is the same as in Catan	Applicant freed	Applicant freed Dubious role of Moldovan police in handing the applicant	-

	<b>Istratiy</b>	<b>Filin</b>	<b>Matcenco</b>	<b>Grama and Dîrul</b>	<b>Șcerbina</b>	<b>Mfrea and Mfrea</b>
NUMBER	15956/11	48841/11	10094/10	28432/06, 5665/07	76892/14	7845/06
RESPONDENT STATES	Moldova and Russia	Moldova and Russia	Moldova and Russia	Moldova and Russia	Moldova and Russia	Moldova and Russia
DATE OF JUDGMENT	17 September 2019	17 September 2019	17 September 2019	15 October 2019	26 November 2019	2 November 2017 and 29 November 2019
KIND OF JUDGMENT	Committee	Committee	Committee	Committee	Communication	Communication
VIOLATION	5.1 (Russia)	3, 5.1, 13.3 (both)	5.1 (Russia)	1 Protocol 1, 13 (Russia)	-	-
CASE CLASSIFICATION	Detention (fraud)	Detention (robbery)	Detention (fraud)	Car case	Labour proceedings	Detention (murder)
(MAIN) CITY	Rîbnita	Chișinău and MRT (unspecified)	Tiraspol	Cojova (Moldova) and Lunga (MRT)	-	Bender
EXECUTION GROUP	Not grouped	Not grouped	Not grouped	Not grouped	-	-
STATUS OF EXECUTION	Pending	Pending (Moldova has paid)	Pending	Pending	-	-
DIRECT INVOLVEMENT OF INTERNATIONAL ACTORS	-	-	ICRC OSCE	OSCE	-	-
OTHER RELEVANT FACTS	Some statements by the applicant regarding his condition are not accepted by the Court	Applicant freed. MRT agents move freely through Moldovan territory	MRT Justice Minister in direct contact with OSCE	-	'Similar to <i>Sobco and Ghent</i> '	Released by amnesty. MRT goes against friends of the applicants for helping him

	<b>Cilei</b>	<b>Cazac and Surchian</b>	<b>Oprea and Others</b>
NUMBER	48145/10	22365/10	36545/06
RESPONDENT STATES	Moldova and Russia	Moldova and Russia	Moldova and Russia
DATE OF JUDGMENT	12 December 2019	7 January 2020	18 February 2020
KIND OF JUDGMENT	Communication	Committee	Committee
VIOLATION	-	3, 5.1, 6.1, 6, 13 (with 3, 8)	1 Protocol 1 and 13 (Russia)
CASE CLASSIFICATION	Detention (encouraging murder)	Detention (spy)	Road case
(MAIN) CITY	Unspecified	Bender	Molovata-Nouă
EXECUTION GROUP	-	Not grouped	Not grouped
STATUS OF EXECUTION	-	Pending	Pending
DIRECT INVOLVEMENT OF INTERNATIONAL ACTORS	-	OSCE	OSCE
OTHER RELEVANT FACTS	Released by amnesty	Pardoned in 2011	It is one of the villages in <i>Sandul</i> and the MRT declares ownership in the same year

#### A) Thematic classification

Most cases are similar to one another, because they describe the same systemic problem or even because they are a follow-up of a previous case that remained unsolved. Sometimes the same applicant is present in several of them. The discussion in further sections uses the following classification:

-Detention cases. These have to do with the arrest of people in unfair conditions, breaching articles 5 or 6 of the Convention. The violation is normally established on the basis of the conditions of the MRT prisons, the way the applicant was captured<sup>201</sup>, or the unnecessary or prolonged pre-trial detention. As the Court refuses to analyse the legal

<sup>201</sup> For example, taken against his will from Moldova-proper to the MRT in European Court of Human Rights, *Draci v. Moldova and Russia*, no. 5349/02, 17 October 2017

system of the MRT, there is no information about the proceedings and it is unknown whether the applicants committed the actions attributed to them or not. This is the reason Judge López Guerra was worried, in his separate opinion, about the precedent it was creating to declare any legal proceeding of the MRT as a violation of the Convention. However, sometimes it is hinted that they are political prisoners (most notably, *Ilaşcu* and *Ivantoc*) or that the accusations are exaggerated or directly unbelievable (such as the man who reportedly stole roses from a public park and in doing so 'endangered the lives' of the agents of order, an expression even the Court put between comas<sup>202</sup>). I am including in this category every detention, from years in prison like Ilie Ilaşcu to those who were arrested and kept in custody for hours or a few days (such as politicians of Moldovan loyalty whose electoral actions were considered a threat to the State<sup>203</sup>). These cases have their origin in the procedural laws of the MRT, which allow the police and the judges to arrest people or prolong their preventive imprisonment on a loose and unspecific basis<sup>204</sup>. There are thirty-two cases of this kind.

-Unfair cases without detention. Similar in nature, facts and proceedings before the Court, there are a few exceptions where the object is not a criminal case and therefore the applicant is not jailed. The Court has not considered it to be a different application of its doctrine, so it is solved by a Committee of three judges without developing the arguments at length. There are three of such cases. Two are labour proceedings<sup>205</sup> and one is a civil case<sup>206</sup>. Two of them are still in communication, so the Court might still develop its doctrine, although it is quite unlikely.

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<sup>202</sup> European Court of Human Rights, *Antonov and Others v. Moldova and Russia*, no. 315/10, 1153/10, and 1158/10, 2 July 2019

<sup>203</sup> European Court of Human Rights, *Beşleagă v. Moldova and Russia*, 48108/07, 2 July 2019

<sup>204</sup> Promo-Lex, Raport. Drepturile Omului În Regiunea Transnistreană A Republicii Moldova. Retrospectiva anului 2019, Chişinău, 2020, p. 19. <https://promolex.md/18014-raport-drepturile-omului-in-regiunea-transnistreana-a-republicii-moldova-retrospectiva-anului-2019/?lang=en> (accessed 8 July 2020)

<sup>205</sup> European Court of Human Rights, *Sobco and Ghent v. Moldova and Russia*, no. 3060/07 and 45533/09, 18 June 2019; and European Court of Human Rights, *Şcerbinina v. Moldova and Russia*, no. 76892/14, comm. 26 November 2019

<sup>206</sup> European Court of Human Rights, *Denisenko v. Moldova and Russia*, no. 33842/10, comm. 16 September 2019

-School cases. These follow *Catan*: schools that use the Latin script are harassed by the MRT authorities until Moldova and the OSCE intervene, normally renting new facilities, or even moving the school to a village under Moldovan control. In these cases Moldova also arranges daily transportation for the children, but they are subject to excessive, intrusive and unjustified controls by the MRT authorities. For this reason some of the schools of the original case have become applicants again (together with new schools) in *Iovcev*<sup>207</sup>, a judgment issued in 2019. Before this *Catan* had only had one follow-up the next year<sup>208</sup> (2014) with different schools, making a total of three cases.

-Road cases. I use this denomination for the two cases<sup>209</sup> that arise of a very specific event: in 2004 the MRT claimed ownership over the territories surrounding one of its roads, which crossed fields under the jurisdiction of Moldova. The owners were asked to sign new contracts with the 'State'; after they refused, seizure of machines and coercion to pay taxes started. Although only two cases belong to this category, they represent the largest part of the Moldovan applicants before the Court of Strasbourg – 52% by 2018 (the rest of the Transnistrian cases were 7%)<sup>210</sup>. The first case included 1646 natural persons and 3 companies; the second, 57 natural persons. Moldova engaged in annual negotiations with the MRT to obtain exemptions of taxes for the people affected while at the same time implementing measures in the region such as tax breaks, incremented pensions or preferential credits to alleviate their situation<sup>211</sup>.

-Deaths related to soldiers and the army. This category might, in turn, be divided into two. *Pisari* involved a death produced by the Russian peacekeeping force. The direct involvement of Russia makes the case different to all others and will be discussed in the pertaining sections. The other two cases have to do with soldiers of the MRT army who are found dead for unexplained reasons.

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<sup>207</sup> European Court of Human Rights, *Iovcev and Others v. Moldova and Russia*, no. 40942/14, 17 September 2019

<sup>208</sup> European Court of Human Rights, *Bobeico and Others v. Moldova and Russia*, no. 30003/04, 23 October 2013

<sup>209</sup> European Court of Human Rights, *Sandu and others v. Moldova and Russia*, no. 21034/05 and 7 others, 17 July 2018; and European Court of Human Rights, *Oprea and others v. Moldova and Russia*, no. 36545/06, 18 February 2020

<sup>210</sup> Apostol, p. 8.

<sup>211</sup> ECtHR, *Sandu*, para. 20.

-Car cases. The MRT has been known to stop people for driving vehicles with Moldovan licence plate, fining them and seizing the cars. The intervention of Russian peacekeepers<sup>212</sup> or the OSCE<sup>213</sup> can lead to recovering the car, but not the driving licence or the money paid. There are four cases of this kind.

-Sui generis. Last, there are three cases that do not fit in any classification. One concerned a change in the value of savings<sup>214</sup>, another a mistake in the labels of poisonous mushrooms<sup>215</sup> and finally there was one about lack of access to social benefits<sup>216</sup>. The first was declared inadmissible. The second was communicated in 2013 and no further information can be found in the HUDOC database, which suggests the Court has decided to strike it out even if the formal decision is not out yet. The third case is a communication from 2019 so we might still see the Court applying their case-law on a different setting.

#### *B) Time of the decision*

The first case of the Transnistria saga is *Ilaşcu*. Its judgment was issued on 8 July 2004, but on 4 July 2001 the Grand Chamber had already issued its decision on the admissibility. The Court stated that the reasons to admit the jurisdiction of the Russian Federation had enough weight to admit the case, but they did not outline their thesis yet:

In the current state of the evidence the Court is of the view that it does not have sufficient information to enable it to make a ruling. Furthermore, the issues are so closely bound up with the merits of the case that it is inappropriate to determine them at the present stage of the proceedings<sup>217</sup>.

Thus in practice the Transnistria doctrine and its saga have existed for sixteen years. A quick glance at Figure B will show us that after the start of the Court there was a lapse of seven years without Transnistrian activity (with the exception of one case declared inadmissible in 2008) until returning to the same case in 2011 with *Ivanțoc*. *Catan* was

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<sup>212</sup> European Court of Human Rights, *Coțofan v. Moldova and Russia*, no. 5659/07, 18 June 2019

<sup>213</sup> European Court of Human Rights, *Grama and Dîrul v. Moldova and Russia*, no. 28432/06 and 5665/07, 15 October 2019

<sup>214</sup> European Court of Human Rights, *Kireev v. Moldova and Russia* (dec), 11375/07, 1 July 2008

<sup>215</sup> European Court of Human Rights, *Totchi and Others v. Moldova and Russia and Ukraine*, no. 8833/10, comm. 17 January 2013

<sup>216</sup> European Court of Human Rights, *Șutac v. Moldova*, no. 3372/12, comm. 30 August 2019

<sup>217</sup> European Court of Human Rights, *Ilaşcu and Others v. Moldova and Russia* (dec.) [GC], no. 48787/99, 4 July 2001, 'The law', I, 2.b

the only case for 2012. Two cases in 2013, one in 2015, two in 2016; only then does the Court start to have a busier schedule regarding Transnistria. There are 10 cases in 2017, 6 in 2018, 24 in 2019 and (as of now) 2 in 2020. The increase, however, is misleading; it only reflects how the Court considered that its case-law became established. *Ilașcu* and *Catan* were heard by the Grand Chamber; the rest of cases that were admitted were solved by a Chamber, with the exception of *Bobei*, considered so similar to *Catan* that a Committee could deal with it. In 2016 *Mozer* was again heard by the Grand Chamber; since 2018 the Court has left every case to a Committee, with the logic consequences in brevity of the text and lack of reasoning (they are all redirected to *Mozer*). In other words, the proceedings regarding MRT cases have become semi-automatic, which would not be a problem under normal circumstances, but is dramatic with the current problem of non-execution. The action of the ECtHR in Transnistria seems to have reached a dead end in 2017.

The main reason *Mozer* is an exception in the Grand Chamber – Chamber – Committee progression is this sentence:

The Court considers, given the absence of any relevant new information to the contrary, that this conclusion continues to be valid for the period under consideration, namely November 2008 to July 2010<sup>218</sup>.

*Ilașcu* had covered events until 2004; *Ivanțoc*, until 2007. All subsequent cases concerned facts that happened before the turn of the decade. This implies that the Court will eventually have to go into a deeper analysis again, when actions presumed to constitute a violation and that took place after 2010 reach the Court<sup>219</sup>. The last communication, *Cilei*<sup>220</sup>, is about a person that remained in prison between 2010 and 2012. It is possible that the Court is already processing cases that are not communicated yet.

The analysis of the dates shows that the difficulties in implementation do not inform the Court when deciding how to adjudicate a new case. In other words, the Court decides its reasoning on purely theoretical grounds without considering adapting its case-law to the

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<sup>218</sup> ECtHR, *Mozer*, para. 108.

<sup>219</sup> Galani, p. 699.

<sup>220</sup> European Court of Human Rights, *Cilei v. Moldova and Russia*, no. 48145/10, comm. 12 December 2019

actual possibilities of execution. Even in *Mozer*, where it is forced to revise its reasoning and link it all the way back to *Ilașcu* (implicitly stating the existence of a ‘Transnistria saga’) there is no mention of the difficulties in implementation. Scholars also warn that proroguing the Russian influence test will at some point be insufficient, because ‘the strength of influence may rapidly change as the political winds blow’<sup>221</sup>. But despite its potential, time is not a relevant variable in this study.

### *C) Location*

The analysis of the cases shows that the main events of the cases tend to happen around the same places. Evidently the capital of the MRT in Tiraspol is the most frequent, with 16 cases. Then follows Bender with 10. The rest are Rîbnita, Grigoriopol, Dorotcaia, Lunga, Corjova, Cocieri, Dubăsari, Pîrîta, Molovata Nouă, Pohrebea, Parcani, Grimăncăuți, Varnita, Ternorca, Butor, Camenca, Rezina, Hlnaia, and, in two occasions, Chișinău. Not all of these places are under the control of the MRT. Many cases took place in two adjacent locations, one Moldovan and one Transnistrian. Our first conclusion is that, besides the cases that have to do with centralised authorities, conflicts susceptible of reaching Strasbourg happen mainly around the frontier. Why does this happen? One would conclude that either the MRT authorities only violate the Convention when they are confronted by their Moldovan counterparts or the potential violations that happen where the power of the MRT is undisputed are never acted upon. Although it is difficult to give an answer due to the obscurity of the Transnistrian system, I am strongly inclined to believe it is the second option for two reasons. First, while many violations have to do with their assertion of sovereignty (e.g. the cases about expropriation, schools, car plates, controls on the border) others are inherent to the system (essentially, the problems with their justice system and prisons) and there is no reason to think the Transnistrian courts or prisons that are not located in Tiraspol or Bender are more in line with the Convention. Second, it is proven that the MRT has taken measures to prevent lawyers from accessing

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<sup>221</sup> Boillat, P., ‘Executions of judgments: new paths’, in A. Kononov (ed.), *Case-law of the European Court of Human Rights – Extraterritorial jurisdiction: Looking for solutions*, special issue, Moscow, International and Comparative Law Research Centre, 2018, p. 67.

their potential clients going as far as banning a legal NGO accusing it of illegal activities<sup>222</sup>. This will be expanded upon on the section on implementation.

Apostol notes that from 2001 the Moldovan applicants before the ECtHR are more numerous from the Transnistrian region than from the government-controlled territory<sup>223</sup>. I do not think this fact can tell us much as of itself. The number of applications does not automatically entail a number of violations. Several factors must be taken into account: access to the Court, financial resources, actual hopes of changing the situation... and it is impossible to assess them without direct access to the applicants.

The other important fact is this section is the special status of Bender and its immediate surroundings. The city of Bender is on the West side of the Dniester and was historically tied to the Principality of Moldavia. Due to its strategic position it was one of the main scenarios of the war and was controlled by the Russians by the time of the ceasefire agreement. It became the seat of the Joint Control Commission (JCC). The organisation is laid out in the agreement of 21 July 1992:

#### Article 2

1. A specially created commission, composed of representatives of the three parties to the settlement of the conflict, will have responsibility for verifying implementation of the measures provided for in Article 1 above and ensure that a security regime is enforced within the security zone. To that end, the commission will have recourse to the groups of military observers brought in under previous agreements, including quadripartite agreements. The control commission will complete its work within seven days of signature of the present agreement.
2. Each party will appoint its representatives to the commission. The control commission will sit in Bender.
3. With a view to implementing the measures mentioned above, the control commission will take under its orders the military contingents of volunteers representing the parties participating in the implementation of the present agreement. The positions to be occupied by these contingents and their interventions to maintain the ceasefire and ensure security in the conflict in the region will be determined by the control commission, which must reach a consensus in this regard. The size

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<sup>222</sup> Promo-Lex, 'Transnistrian KGB vs. Civil Society. Who is next after Promo-LEX, Apriori and Larisa Kalik cases?', 13 April 2020, <https://promolex.md/17373-kgb-ul-transnistrean-vs-societatea-civila-cine-urmeaza-dupa-cazurile-promo-lex-apriori-si-larisa-kalik/?lang=en> (accessed 20 June 2020)

<sup>223</sup> Apostol, p. 7.

of the military contingents, their status and the conditions for their intervention in and withdrawal from the security zone will be laid down in a separate protocol.

4. In the event of breaches of the provisions of the present agreement, the control commission will carry out inquiries and take without delay the necessary steps to re-establish peace and order, and appropriate measures to prevent future breaches.

#### Article 3

As the seat of the control commission, and in view of the seriousness of the situation, Bender is hereby declared a region subject to a security regime, enforcement of security being the task of the military contingents of the parties to implementation of the present agreement. The control commission will ensure the maintenance of public order in Bender, acting together with the police.

Bender will be administered by the organs of local self-government, where necessary acting together with the control commission<sup>224</sup>.

The local political authorities are part of the MRT. However, the Moldovan government controls prison no. 3 and some state structures, such as the Prosecutor's Office. In the immediate surroundings there are districts controlled by the MRT and districts controlled by the Republic of Moldova. For these reasons there are cases, such as *Pocasovschi and Mihaila*, in which authorities answering to both regimes take part in the same investigation or have power over the same applicant. The consequence is that Moldova is responsible inasmuch as its agents have control over the situation.

#### *D) Respondent State*

The general rule is that both Moldova and Russia are respondent States in the cases concerning the MRT, following the case-law established by *Ilaşcu*. In most cases Russia is the State found in violation for its lack of action to prevent violations. There are, however, some exceptions.

-Both States are found in violation when Moldova, being aware of the situation, did not take action to prevent it (*Ilaşcu* is the only case of this kind) or when Moldovan agents were directly implicated. As mentioned in the previous section, this can happen when the case has to do with a Moldovan-controlled prison in MRT territory (and therefore

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<sup>224</sup> As quoted in ECtHR, *Ilaşcu*, para. 292

dependent on the separatists for electricity and water). It has also happened when the prisoner is under the control of the MRT, but has to be temporarily transferred to a Moldovan-controlled hospital (*Braga*<sup>225</sup>) and the Moldovan authorities send the applicant back. Another possible reason is when the Moldovan police appears to cooperate with the MRT police and subsequently the applicants suffer violations of their rights. The Court has used this reasoning not only when the presence of Moldovan agents in the detention is proven<sup>226</sup>, but also when it is deduced from the circumstances: in one occasion they asserted that it was highly improbable that the MRT police could move freely through Chişinău-controlled territory to arrest a person without being noticed by the Moldovan agents<sup>227</sup>. This is the most specific reprimand received by Moldova for collaborating with the MRT, although it is just an inference and there is no record of systemic permission.

-Only Russia is a respondent State. This refers to the very specific case of *Pisari*. The son of the applicants was killed when returning from a New Year's Eve celebration on the other side of the river, presumably by the Russian peacekeepers that were part of the JCC. Although the case is directed against both States, early on the text the Court indicates that the family considers that Moldova had nothing to do with the death of their son and the Court accepts to strike Moldova out<sup>228</sup>. On the other hand, and this is remarkable, given the direct participation of Russian soldiers, even within a joint force, Russia accepts its jurisdiction<sup>229</sup>. The Chamber (which includes Judge Dedov) ruled unanimously and without dissenting opinions.

-Only Moldova is found in violation. This has happened once, in *Pocasovschi and Mihaila*, but it does not represent a different line of reasoning. The applicants took too much time to lodge their application after they had been jailed by the MRT (where they were under Russian jurisdiction) and therefore only the part referred to Moldova was

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<sup>225</sup> European Court of Human Rights, *Braga v. Moldova and Russia*, no. 76957/01, 17 October 2017

<sup>226</sup> European Court of Human Rights, *Negruța v. Moldova and Russia*, no. 3445/13, 17 September 2019

<sup>227</sup> European Court of Human Rights, *Filin v. Moldova and Russia*, no. 48841/11, 17 September 2019

<sup>228</sup> European Court of Human Rights, *Pisari v. Moldova and Russia*, 42139/12, 21 April 2015, para. 34-35.

<sup>229</sup> *ibid*, para. 33

admissible. Presumably, had they been more diligent, this would have been a case of violation by both States.

It is important to comment on this exception because we see that there are no cases where Moldova is the sole responsible for something that happened on Transnistrian soil; in other words, Russia has never discharged its responsibility (or tried to) before the affair reached Strasbourg.

-None of the States is found in breach of the Convention. There are no judgments declaring that there has been no violation, but there are three decision declaring cases inadmissible. Two of them are not of much relevance for this study: another case of late application<sup>230</sup> (but this time there were no circumstances to hold Moldova responsible) and an applicant who died (and whose successor did not desire to continue the application)<sup>231</sup>. The third case is a decision issued on 2008, thus the second case of the Transnistrian saga, before *Ivanțoc* or *Catan*. The applicant complained that the value of her savings had been modified by the MRT. However the Court found that she would not have a case under Moldovan or Russian legislation either<sup>232</sup>, so it was not a violation of the Convention. This is a limit to the rule expressed by López Guerra in his separate opinion: not everything that happens in Transnistria is a violation of the Convention – it has to be a violation had it happened in Chișinău or Moscow.

-Other States involved. The Transnistrian cases can tangentially affect other States. While in one case there was an applicant of the German ethnic minority<sup>233</sup>, the only States to have formally participated in proceedings are Romania and Ukraine.

Romania's specific interest in the Transnistrian judicial saga did not go beyond the allegations in *Ilașcu*, given the political project of unification with Romania and the acquisition of Romanian nationality by the applicants. The republic submitted its views as an interested third State, arguing that Moldova had not undertaken every possible

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<sup>230</sup> European Court of Human Rights, *Versilov v. Moldova and Russia* (dec), no. 28750/11, 18 September 2018

<sup>231</sup> European Court of Human Rights, *Beloziorov and Molodțova v. Moldova and Russia* (dec.), no. 3368/12, 17 January 2019

<sup>232</sup> ECtHR, *Kireev* (dec)

<sup>233</sup> ECtHR, *Mozer*, para. 44.

action to assert its sovereignty over Transnistria<sup>234</sup>. As we have seen, the Court did not accept it as a general principle, although it found Moldova in violation for its inaction regarding three of the applicants. Romania repeated its allegation in *Ivanțoc*, this time to no avail<sup>235</sup>. *Ilașcu* and *Ivanțoc* are not the only cases about politicians who disagree with the MRT, but they are (as far as we know from the text of the judgments) the only cases about politicians who work for reunification with Romania.

As for the Ukraine, it has been a respondent State on three occasions. Twice because the applicant had Ukrainian nationality<sup>236</sup> and a third one for unspecified reasons<sup>237</sup>. The third one is a communication, but in the other two the Court retired Ukraine from the proceedings as soon as it examined that it could not have any responsibility whatsoever on the mere basis of the nationality of the applicant. There is a fourth case in which the applicant is dragged into the MRT from Ukraine<sup>238</sup>, but the State was never present in the proceedings. This shows the contrast between Ukraine's attitude in the political negotiations, where it joined the 5+2 format, and before the Court of Strasbourg, which is not a matter of its interest.

Of course the elephant in the room is the MRT itself, behaving like a State but unable to take part in the proceedings, where Moldova and Russia refuse to represent it. The Court complains of the lack of information about the legal system of the MRT, although there is evidence that the applicants sent information about the method to appoint judges in the MRT<sup>239</sup> and the legislation from December 2016 on is available at the web of the President of the MRT<sup>240</sup>.

The question is, is there a legal path for the MRT to participate? There are at least two ways to do this. One is to consider Article 36(2) of the Convention:

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<sup>234</sup> ECtHR, *Ilașcu*, para. 309.

<sup>235</sup> ECtHR, *Ivanțoc*, para. 76-80.

<sup>236</sup> ECtHR, *Totchi*; European Court of Human Rights, *Soyma v. Moldova and Russia and Ukraine*, no. 1203/05, 30 May 2017

<sup>237</sup> European Court of Human Rights, *Kolobychko and Others v. Moldova and Russia and Ukraine*, no. 36724/10, 18 September 2018

<sup>238</sup> ECtHR, *Draci*

<sup>239</sup> ECtHR, *Mozer*, para. 125.

<sup>240</sup> <http://president.gospmr.org/pravovye-akty/zakoni/> (accessed 5 July 2020)

The President of the Court may, in the interest of proper administration of justice, invite (...) any person concerned who is not the applicant to submit written comments or take part in hearings.

However, the usual third-party interventions<sup>241</sup> do not resemble this option. It would be an innovation. Although it is possible, there is no need for that; in my view, the best option would be to have one of the respondent States contact the MRT authorities to obtain the necessary legislation, case-law, and possibly legal arguments, as they would do if Transnistria were a Member State of the CoE. This is closer to the model of the TRNC, which is represented at the PACE using Cypriot seats<sup>242</sup>.

The last question to answer is which country would grant the MRT representation. The doctrine of the Court suggests it should be Russia, but precisely for that reason it is unlikely to happen: it would be contradictory to denounce the influence test and assume their representation.

On the other hand, Moldova should be interested in allowing the MRT to have a voice in Strasbourg for limited purposes. Some of the arguments in favour of using the Namibia exception in the relations between the constitutional authorities of Moldova and the MRT come from the environment of the ECtHR: for former Judge Poalelungi, the recognition of judgments issued by illegal authorities to the extent needed to protect the rights of the citizens is not only an option, but an obligation established by the Court. Using *Güzelyurtlu*<sup>243</sup>, he concludes that even cooperation in the investigation is needed<sup>244</sup>. But it would be pointless for Moldova to cooperate, e.g., in criminal affairs with the MRT if after handing suspects to them Strasbourg is going to consider that all the legal proceedings were a violation of the Convention and Moldova (whose police would be implied, as it has happened before) will be forced to pay the applicants.

Thus, the MRT would have a motivation to try to comply with the Convention. It is also in the interest of the Court because in case of violation it would be able to identify

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<sup>241</sup> P. Harvey, 'Third Party Interventions before the ECtHR: A Rough Guide', *Strasbourg Observers* [web blog], 24 February 2015, <https://strasbourgobservers.com/2015/02/24/third-party-interventions-before-the-ecthr-a-rough-guide/> (accessed 8 July 2020)

<sup>242</sup> See previous section 4.3.A.

<sup>243</sup> European Court of Human Rights, *Güzelyurtlu and others v. Turkey and Cyprus* [GC], no. 36925/07, 29 January 2019

<sup>244</sup> Poalelungi, pp. 763-765.

systemic problems. Up to now it only mentions the existence of MRT legislation and describes it briefly without quoting it<sup>245</sup> and the NGO representing the applicants has complained<sup>246</sup> that the worst problem of the judgments and *Mozer* in particular is the inability to address systemic issues. Then the mandate of execution, even if still phrased as an obligation of results and not of means, would be more specific.

#### *E) External agents*

The text sometimes mentions the presence of other agents besides the applicants and the authorities of Moldova and the MRT. I do not refer in this section to the use of reports by international organizations and NGOs by the Court to establish the facts on the general situation, but to involvement in the specific case. Russia is sometimes present, not only through the peacekeeping force, but as a mediator in the school cases. In one case where the applicants were journalists arrested under the accusation of being spies, the European Union, the United States of America and the Council of Europe contributed to put pressure on the MRT regime through diplomacy<sup>247</sup>. On two occasions the ICRC visited applicants in prison<sup>248</sup>.

But the only external agent that is continuously present is the OSCE. We have already explained its role in the school cases; they have also acted as mediators in the road cases and in some of the detention cases. They are respected on the ground to such extent that at least once the 'Minister of Justice' of the MRT was in direct contact with them to inform them about the progress of a case<sup>249</sup>. Altogether they are mentioned in 13 cases. In the context of this research, this fact must be contrasted with the absence of mentions by the ECtHR of the own bodies and agents of the CoE of the field, despite the existence of CoE offices in both Moscow and Chişinău.

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<sup>245</sup> E.g. ECtHR, *Mozer*, para. 74-77.

<sup>246</sup> Apostol, p. 35.

<sup>247</sup> European Court of Human Rights, *Vardanean v. Moldova and Russia*, no. 22200/10, 30 May 2017

<sup>248</sup> In *Mozer* and in European Court of Human Rights, *Matcenco v. Moldova and Russia*, no. 10094/10, 17 September 2019

<sup>249</sup> ECtHR, *Matcenco*, para. 14.

Adding this information to the mandate of the OSCE office in Moldova that was explained in Section 4, the result is that the ECtHR requires the action of another pan-European organization to get the judgments to be discussed.

*F) The ECtHR and the analysis of facts*

One of the most interesting points is the evolution of the assessment of the facts by the Court. *Ilașcu* required a fact-finding mission by the judges and the inclusion of the declarations of the witnesses as an annex. From then on, the Court did not go that far. In *Ivanțoc* and *Mozer*, they combined the description provided by the applicants with the declarations of international agents (OSCE, ICRC...) that took part in the *specific facts* of the case and with the reports by different institutions and organisations (PACE, UN Special Rapporteur, CoE High Commissioners, CPT...) describing the *general circumstances*. They tended to consider true the statements of the applicants when they fitted the precedent of *Ilașcu*, the reports on the environment and were compatible with the information given by other agents. In *Catan* this was easier given the direct involvement of Moldova and the OSCE in every step and the fact that the violation happened in schools and not prisons.

From then on, the Chamber and Committee judgments usually complain that they do not receive information from the proceedings that take place in the MRT but they trust the applicants nonetheless when their declarations are plausible in view of the precedent.

There are a few exceptions. In the cases where the death of the applicant was caused by the army the Court made an effort to clarify the facts contrasting the different investigations. In *Pisari*, even though the applicant had initially not been notified of the result of the investigations<sup>250</sup>, it was possible to discuss it, given that the investigating authority (Russia) was a part in the proceedings. In the other two cases it had to deal with the investigations carried out by the MRT. And surprisingly, in *Stomatii*, the Court gives a detailed account of the investigation performed by the MRT<sup>251</sup>, although it notes that

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<sup>250</sup> ECtHR, *Pisari*, para. 29.

<sup>251</sup> European Court of Human Rights, *Stomatii v. Moldova and Russia*, no. 69528/10, 18 September 2018, para. 13-30.

afterwards the person arrested was freed by an amnesty law to which it has no access<sup>252</sup>. Unfortunately, the judgment does not mention who provided the Court with the investigation nor why it could not receive the amnesty law too. In its reasoning, the Court goes through the investigation and concludes it was not exhaustive enough<sup>253</sup>. It is true that the Court mentions that the parties have failed to prove the existence of adequate procedures to determine and punish the offences committed by the armed forces<sup>254</sup>, but the door is open. In the similar case of *Kolobychko* the Court noted that the applicant had not been notified of the full investigation (in which an expert working for Russia had taken part)<sup>255</sup>, but yet implicitly admitted that an investigation in line with the Convention could have been performed, instead of dismissing it by principle. The contrast with the 'MRT doctrine' expressed in the Grand Chamber cases is remarkable: while any detention case is a violation since the MRT courts are not courts established by law in the meaning of the Convention, when it comes to the investigating authorities their existence is respected and they are potentially able to discharge Russia of its responsibility (although it does not happen in these cases).

This enters in contradiction with López Guerra's assertions, at least partially. He feared a snowball effect where every administrative or judicial action by the Transnistrian authorities would amount to a violation of the Convention. This is unsustainable in a system that had ruled over 10,000 civil cases by the time the Court investigated its first case<sup>256</sup>. The alternative is, following the example of *Loizidou* and the case-law of Northern Cyprus, to apply the Namibia exception and accept that while the conflict remains the MRT courts are necessary to protect the rights of the inhabitants of Transnistria.

There are several arguments to support this position. First, it had obtained good results in the TRNC. Even though the specific case of *Loizidou* was not properly solved, it

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<sup>252</sup> *ibid*, para. 30.

<sup>253</sup> *ibid*, para. 54-68.

<sup>254</sup> *ibid*, para. 67.

<sup>255</sup> ECtHR, *Kolobychko*, para. 15-18.

<sup>256</sup> Sturza, chairman of the Commission for negotiations with the MRT, as quoted in ECtHR, *Ilaşcu*, annex, para. 318.

compelled the TRNC authorities to create a commission to work on it<sup>257</sup>. Second, as Moscow, Chişinău and Tiraspol all benefit from the current state of affairs<sup>258</sup>, it is unlikely the MRT will be defeated or integrated in Russia soon.

Third, and perhaps most evident, from the three cases that have been closed, it seems the current approach is not working outside politically sensitive cases – one could even argue that *because* they were politically sensitive cases they would have been solved by the States and the OSCE even without the ECtHR.

But as this section has proved, López Guerra's argument is not completely consistent with the case-law of the Court: the Namibia exception has been implicitly applied to the MRT police and legislature. While the Court has tended to dismiss every MRT ruling in criminal affairs, and there are also precedents in civil and labour cases (*Denisenko, Sobco and Ghent* and *Şcerbinina*), it has been proven that there were actions of the MRT that did not activate the responsibility of Russia nor Moldova (*Kireev*) and on two occasions the Court has analysed the investigations of the MRT (*Stomatii* and *Kolobychko*). Why is it that the Namibia exception cannot be applied to the courts but is implicitly applied to the police? Then in *Catan* the Court discusses whether the MRT policy was a legitimate intervention<sup>259</sup> – it concludes that it was not, but if the Court is expected to be coherent, the day may arrive where the MRT acts in a proportional way, and the precedent shall be applied. Why would the Namibia exception be applied regarding schools and not prisons?

There is a possible answer to this question, if one analyses the case-law chronologically. In *Ilaşcu* and *Ivanțoc*, the Court did not apply the Namibia exception and did not examine the proceedings of the MRT. But there was no evidence that the MRT courts were not 'courts established by law'. The reason was that the Court was not competent *ratione temporis* to analyse the proceedings, because Moldova and Russia had not ratified the Convention in the early 90s. The violation was established on the basis of the *conditions* of the detention after ratification. Then in *Mozer*, the Court has to analyse whether its findings on the MRT up to 2004 are still valid up to 2010. And while it lists again the

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<sup>257</sup> Kempees, p. 276.

<sup>258</sup> Buzogany and Marandici, p. 80; also K. Całus, *The Unfinished State. 25 Years of Independent Moldova*. Warsaw, Ośrodek Studiów Wschodnich Im. Marka Karpia, 2016, p.73.

<sup>259</sup> ECtHR, *Catan*, para. 144.

arguments for Russian jurisdiction, it concludes that it has no information to decide whether the MRT has a compatible constitutional tradition<sup>260</sup>. The violation is founded on the specific characteristics of the case, which are enough to conclude that *in that case* there were arbitrary acts. But the Court started to apply the reference to *Mozer* to establish violations in Chamber and Committee, jumping from Article 5 (liberty) to Article 6 (fair trial) without analysing the legal proceedings. The Court says in *Mozer*:

[T]he Court notes the scarcity of official sources of information concerning the legal and court system in the “MRT”, a fact which makes it difficult to obtain a clear picture of the applicable laws. Consequently, the Court is not in a position to verify whether the “MRT courts” and their practice fulfil the requirements mentioned above<sup>261</sup>.

And in *Vardanean* (first case that finds a violation of Article 6):

The Court reiterates that in *Mozer* it held that the “judicial system” of the “MRT” was not a system reflecting a judicial tradition compatible with the Convention (...). In the absence of any new and pertinent information proving the contrary, the Court considers that the conclusion reached in *Mozer* is valid in the present case too. Moreover, in the light of the above findings in *Mozer*, the Court considers that not only could the “MRT” courts not order the applicant’s lawful detention for the purposes of Article 5 § 1 of the Convention, but also, by implication, they could not qualify as an “independent tribunal established by law” for the purposes of Article 6 § 1 of the Convention<sup>262</sup>.

In other words, the Court will apply its presumption that legal proceedings in the MRT are not in line with the Convention until Russia proves that it is otherwise, although the presumption is based, as the Court itself admits, on one case with incomplete information. This creates a situation where even Moldova has sometimes doubted of the words of the applicants<sup>263</sup>. We have seen that the Court tends to accept the words of the applicants when they are plausible in the context of the Grand Chamber case-law and the reports by international organizations. While the general situation is proven, the specific case is not. A lawyer representing Transnistrians in Strasbourg could advise them to complain about arbitrary proceedings *even if this were not the case*, arguing that the applicants have not

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<sup>260</sup> See previous chapter 4.2.C. for more details.

<sup>261</sup> ECtHR, *Mozer*, 147.

<sup>262</sup> ECtHR, *Vardanean*, para. 38-39.

<sup>263</sup> ECtHR, *Mozer*, para. 188.

received documents about their conviction. There are reasonable chances that, as López Guerra feared, the Court would accept it. It is understandable, on this specific point, that the MRT authorities are not satisfied with the Court.

Regardless of the debate on implementation, the Court should use the Namibia exception for reasons of coherence and to solve a loophole in the logic of its reasoning.

## 6. IMPLEMENTATION OF THE JUDGMENTS

The present section analyses the implementation process of the judgments as it is reflected in the documents of the Department for the Execution of Judgments, and then from the Republic of Moldova, the Russian Federation and, to the extent that is possible, in the actions of the MRT.

### 6.1. Department for the Execution of Judgments of the ECtHR

The Committee of Ministers creates groups of cases when their execution is related. In Transnistria, this was initially linked to the thematic of each case. This way, *Ilaşcu* is a leading case to which *Ivanțoc* is attached. The same happens with *Catan* and *Bobeico*. *Pisari* and *Mozer* were considered independently; afterwards, all cases started to be labelled as repetitive and attached to *Mozer*, no matter their topic. The practice ended in 2017. Since *Stomatii* (September 2018), cases are not (yet) grouped. However, the Committee of Ministers has referred to the subsequent cases as 'the Mozer group of cases v. Russian Federation (...) and (...) similar cases v. Russian Federation'<sup>264</sup>. In the meantime, a case that only had to do with the Moldovan authorities<sup>265</sup> was considered repetitive and linked to another leading Moldovan case completely unrelated to Transnistria.

The Committee closed the first group on 6 March 2014, three years after *Ivanțoc* and ten after *Ilaşcu*. By then there had been five resolutions only about the first case. For years,

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<sup>264</sup> Council of Europe: Secretariat of the Committee of Ministers, Communication from the applicants (14/02/2020) in the *Catan* and Others group of cases v. Russian Federation, in the *Mozer* group of cases v. Russian Federation and in 15 other similar cases v. Russian Federation [DH-DD(2020)369] 1377<sup>th</sup> meeting (June 2020) (DH)

<sup>265</sup> ECtHR, *Pocasovschi and Mihaila*

other Member States put pressure on Russia to implement the judgment, in multilateral (Finland, on behalf of the European Union) or bilateral (Ukraine, Iceland, Ireland, Romania, Switzerland, the United Kingdom, the Netherlands) meetings<sup>266</sup>. Russia presented an action plan in 2013 indicating that it had paid and that no more action was needed<sup>267</sup>. Finally the Committee considered the two cases together and closed them. The text, however, has a bittersweet undertone: Russia and Moldova had paid, all applicants had been freed and 'the consequences for the applicants of the violations found have been erased as far as possible'<sup>268</sup>. The Council of Europe had not managed to force Russia to accept jurisdiction over Transnistria, or to get the applicants out of prison until a second judgment was rendered. There was no clear causal link between the judgment and freeing the applicant either. Moldova complained that it revealed systemic problems and should not be closed<sup>269</sup>.

The second group (*Catan*) is not closed yet. In the meantime it has produced 3 resolutions, 16 decisions, 9 notes, 4 NGO communications, 17 State communications and 8 applicant communications. The initial approach was to require urgent individual measures, which were not implemented<sup>270</sup>. Eventually the topic was addressed in joint conferences, although the applicants complain that they have not been successful<sup>271</sup>. The OSCE has taken the lead in these cases. As in *Ilaşcu*, the judgment works as a summary of the facts and a statement of the position of the international community, represented by a pan-European human rights court, but the advances are not directly attributable to the Court.

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<sup>266</sup> Council of Europe: Ministers' Deputies Information documents, CM/Inf/DH(2006)52-rev2, 7 May 2007, 984<sup>th</sup> meeting of the Ministers' Deputies

<sup>267</sup> Council of Europe: Secretariat of the Committee of Ministers, Communication from the Russian Federation concerning the cases of Ilaşcu and others and Ivanţoc and others against Republic of Moldova and Russian Federation (Applications No. 48787/99 and 23687/05), [DH-DD(2013)1074] 1186<sup>th</sup> meeting, 11 October 2013

<sup>268</sup> Council of Europe: Committee of Ministers, Execution of the judgments of the European Court of Human Rights in Two cases against the Republic of Moldova and the Russian Federation, Final Resolution CM/ResDH(2014)37, 1193<sup>rd</sup> meeting, 6 March 2014

<sup>269</sup> Apostol, p. 32.

<sup>270</sup> *ibid*, p. 33.

<sup>271</sup> Council of Europe, Secretariat Of The Committee Of Ministers, Communication from a NGO (31/10/2019) in the case of CATAN AND OTHERS v. Russian Federation (Application No. 43370/04), DH-DD(2019)1365, 1362<sup>nd</sup> meeting, 20 November 2019

The individual cases (*Pisari* and *Pocasovschi and Mihaila*) are also closed, as both States (Russia in the first and Moldova in the second) have paid.

As for *Mozer*, it is also still open and awaiting payment. Although there is no document on the execution process coming from the CoE, we know some details about the current state of events of this group and the ungrouped cases through a communication sent by the lawyers of the applicants in February 2020<sup>272</sup>. The lawyers acknowledge that Moldova has paid but Russia not only has not paid (with the exception of *Pisari*), but does not reply to the letters. The applicants reside in the MRT or the security zone; although they met some of them (as well as the mayors and town councillors) in the main villages, most of the 1650 applicants remain inaccessible, or have died and there is no data on who are the successors. In this situation, the lawyers ask the CoE for help. A report written by the same NGO (Promo-Lex) states that *Mozer* is a 'time bomb' and that 'either the success or failure to implement the ECHR's judgments in the Transnistrian cases fully depends on the supervision of this judgement'<sup>273</sup>. This statement has to be put in its procedural context. As the leading case, the future Resolution of the Committee of Ministers on *Mozer* (the CoE has not produced further documents on this case yet) will have to deal with all the varied cases that have been attached to it. Unfortunately, owing to the lack of public documents we have no access to the reasons that led the Department for the Execution of Judgments to group these cases and not others. As previous sections prove, the violations and circumstances vary greatly from one case to another and there seems to be no common ground beyond their Transnistrian setting, which, on the other hand, is present in other cases that have not been grouped.

These documents from the Department for the Execution of Judgments only give information about the specific execution mandates of each judgments. To analyse more abstract measures aimed at compliance and the general impact of the Court, the analysis has to shift to the States.

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<sup>272</sup> Council of Europe: Secretariat of the Committee of Ministers, Communication from the applicants (14/02/2020) in the *Catan and Others* group of cases v. Russian Federation, in the *Mozer* group of cases v. Russian Federation and in 15 other similar cases v. Russian Federation [DH-DD(2020)369] 1377<sup>th</sup> meeting (June 2020) (DH)

<sup>273</sup> Apostol, pp. 34-35.

## 6.2. Moldova

### *A) The MRT judgments*

Regarding the judgments, we see an evolution in the attitude of the Republic. Moldova was found in violation in *Ilașcu* but it changed its approach and avoided an identical result in *Ivanțoc*. The current position is accepting its jurisdiction but not its responsibility, and the Court tends not to attribute any violation to the Republic unless there is direct involvement of the Moldovan police, which has happened three times. This cannot be deemed to be systemic, and, in the Resolution closing one of them, Moldova has explained the amendments in its legislation to prevent future violations<sup>274</sup>. In terms of implementation, as has been stated in the previous section, Moldova has been diligent to pay.

The Supreme Court of Moldova, on application of the interested person, has quashed judgments from the 'Supreme Court' of the MRT (starting with *Ilașcu*<sup>275</sup>). However, this has no effect beyond its symbolism, as it includes no compensation<sup>276</sup>.

The Moldovan parliament passed an act on 25 February 1998 that has been consistently presented by their legal representatives as an objection to the requisite of exhaustion of domestic remedies: Law no. 1245 (1998) 'on compensation of damage caused by illegal acts of the criminal investigation bodies, the prosecution authorities or the courts', but the name is misleading: its art. 2 states that these illicit actions are 'actions or inactions of the *body with capacity to examine* the cases of contraventions'<sup>277</sup>. As the MRT police agents, prosecutors and judges are not recognised as legal authorities by the Republic of Moldova, and they are not granted any authority to investigate, their citizens cannot claim compensation under the act. This is the conclusion reached by the ECtHR in *Mozer* when the Government of Moldova failed to provide any case of an individual getting redress

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<sup>274</sup> Council of Europe: Secretariat of the Committee of Ministers, Communication from the Republic of Moldova concerning the case of Braga v. Republic of Moldova and Russian Federation (Application No. 76957/01), [DH-DD(2019)827] 1355<sup>th</sup> meeting, 25 June 2019, para. 6-7

<sup>275</sup> ECtHR, *Ilașcu*, para. 222

<sup>276</sup> ECtHR, *Mozer*, para. 118.

<sup>277</sup> 'acțiuni sau inacțiuni ale organului împuternicit să examineze cazurile cu privire la contravenții', translation by the author, emphasis added. Lege Nr. 1545-XIII, passed by the Parliament of Moldova on 25 February 1998, as last amended on 1 December 2017. Art. 2.

for a decision by an MRT authority<sup>278</sup>. Although the law has been amended after the Court took this interpretation, the debated article remains the same and there is no explicit or implicit mention to Transnistria, unlike in other Moldovan laws<sup>279</sup>.

It is worth to briefly comment Moldova's legal strategy in proceedings before the ECtHR. While the constitutional authorities are normally praised by the Court for their efforts in assisting the applicants, Moldova regularly argues that the applicants have not exhausted the domestic remedies by not claiming damages under the aforementioned Law no. 1245. Despite the Court's continuous rejection of this argument, it reappears in a judgment as late as December 2019<sup>280</sup>. However, in the two latest judgments from 2020 the law is not mentioned<sup>281</sup>. As they are brief committee judgments, we have no information on whether Moldova actively took the decision of ceasing to present the objection. In another occasion, Moldova questioned the veracity of the applicant's account, although the objection would be ultimately dismissed by the Court<sup>282</sup>. In both cases, Moldova's efforts to protect the conventional rights of the inhabitants of Transnistria does not require blind acceptance of any complaint. Quite the opposite, an efficient system of protection of human rights requires filters to distinguish real claims. Moldova has never been accused of bad faith. In contrast to the violation of Article 34 found in *Ilașcu* for hampering his access to the Court, these demands cannot be understood as unwillingness to implement the judgments.

A final remark on Moldova's compliance is that it is unclear what is expected of its institutions. The text of the judgments does not give details of what are the rules to assess whether Moldova has exercised its positive obligations or not. An early separate opinion (the one by Judge Ress) tried to shed some light, but it was not developed further. From the cases it would seem that there are essentially two obligations:

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<sup>278</sup> *ibid*, para. 113 and 118

<sup>279</sup> See an example in European Court of Human Rights, *Olaru and others v. Moldova*, no. 476/07 and 3 others, 28 July 2009, para. 27-28

<sup>280</sup> ECtHR, *Grama and Dîrul*, para. 24

<sup>281</sup> European Court of Human Rights, *Cazac and Surchician v. Moldova and Russia*, no. 22365/10, 7 January 2020; ECtHR, *Oprea*

<sup>282</sup> ECtHR, *Mozer*, para. 188 and 192

-Investigating the violation on the victim's request as much as the material circumstances allow it.

-Diplomatic action. This has two sides: the general intention to re-establish its authority over Transnistria and raising its voice in international fora to denounce the violations, and the specific issue of bringing forward the applicant's case.

Still, it is difficult to assess what are the material possibilities (at this point, Moldova can open a case, confirm that it is out of its reach and close it, as the very first separate opinion in an MRT case argued<sup>283</sup>) or to what extent the diplomatic action has served the applicant (Is it enough to mention it in a 3+2 meeting? Or should Moldova, e.g., block the negotiations until the MRT authorities agree to revise a case?). However, we do know some negative limits, as the Court has explicitly denied Romania's early assessment<sup>284</sup> that Moldova had failed to meet its obligations by cooperating with the MRT in economic matters.

In the road cases, besides the negotiations with the MRT, Moldova undertook unilateral action to ease the situation of the farmers with measures such as tax breaks. The Court appreciated these measures but there is nothing to suggest that this kind of action is among Moldova's obligations. These obligations remain undefined.

### *B) Other judgments*

There are other judgments issued by the Court that affect Transnistria, even though the applicants do not come from that region, due to its dual status as non-recognised independent country and region of the Republic of Moldova. There are several cases that reflect the impact that the conflict has on the human rights of the Moldovans living under the jurisdiction of the constitutional authorities, and this can indirectly affect the residents of Transnistria. The Republic of Moldova is the only respondent State.

Moldova has used pre-trial detention on the basis that people suspected of committing crimes *could* abscond in Transnistria – unlike exercising freedom of movement in the other regions of the country, travelling to Transnistria would result in becoming

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<sup>283</sup> ECtHR, *Ilaşcu*, partially dissenting opinion by Judge Casadevall and others, para. 9.

<sup>284</sup> ECtHR, *Ilaşcu*, para. 308-309.

unreachable for the Moldovan police. The Court has found that this reasoning breaches the Convention<sup>285</sup>.

Other cases pertain the civil involvement in the diplomatic conflict that ties Chişinău, Tiraspol and Moscow. The MRT is a frequent topic of discussion in Moldovan public TV, even when criticism of the Moldovan government was not allowed<sup>286</sup>; however, Moldova has also illegally banned demonstrations against the 'occupation of Transnistria by Putin'<sup>287</sup>.

Other decisions concern the limits in the collaboration between the two administrations. Moldova has been known to seize the MRT-printed money from visitors in the moment they step into the territory controlled by the constitutional authorities<sup>288</sup>, something that the Court did not find to be appropriately justified.

In a judgment of utmost importance, the ECtHR found a violation in the limitation of the right to stand for election of those who have multiple nationality, accepting that it might be a justified intervention in some cases, but that Moldova had failed to provide reasoning<sup>289</sup>, and that the provision referring to Transnistria was 'unclear'<sup>290</sup>.

Although Moldova has supported the thesis that Russia has overall control over Transnistria, its diplomatic activity on behalf of applicants does not reach the level of asking Russia to grant them the same rights as to Russian citizens. For example, when Russia denied residence permits to HIV-positive aliens, among them an inhabitant of Transnistria (a practice that the Court found to be discriminatory<sup>291</sup>), Moldova was explicitly offered to participate in the proceedings but did not.

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<sup>285</sup> European Court of Human Rights, *Buzadji v. Moldova* [GC], no. 23755/07, 5 July 2016; *Ignatenco v. Moldova*, no. 36988/07, 8 February 2011

<sup>286</sup> European Court of Human Rights, *Manole and others v. Moldova*, no. 13936/02, 17 September 2001

<sup>287</sup> European Court of Human Rights, *Christian Democrat People's Party v. Moldova* (no.2), no. 25196/04, 2 February 2010

<sup>288</sup> European Court of Human Rights, *Ziaunys v. Moldova*, no. 42416/06, 11 February 2014

<sup>289</sup> European Court of Human Rights, *Tănase v. Moldova* [GC], no. 7/08, 27 April 2010, para. 174

<sup>290</sup> *ibid*, para. 187

<sup>291</sup> European Court of Human Rights, *Novruk and others v. Russia*, no. 31039/11 and others, 15 March 2016

In conclusion, it seems that the judgments of the European Court of Human Rights have a great impact in Moldova. The Republic complies with them to the extent that they include specific mandates and has modelled its approach on past violations. The judgments further guide the policies aimed at reintegration, although regarding the political activity it is impossible to quantify how much is owed to the ECtHR and how much to the actions of other actors, particularly the OSCE.

### 6.3. Russia

#### *A) Specific implementation of the MRT judgments*

Unlike Moldova, the Russian position on jurisdiction before the Court has not evolved, and despite constantly being found in violation, it keeps bringing the same arguments in every case. As the cases of the Ilaşcu group were very political, they finally agreed to pay. This behaviour was not reproduced in any of the subsequent cases, excluding *Pisari*. In this case (as in the initial two) the Russian soldiers were directly involved. This seems to indicate that there is an evolution in its position over responsibility. Unlike in *Ilaşcu*, they are now accepting the responsibility of the Federation when there is direct participation.

Russia has not implemented the measures requested of them in *Catan* (payment) but from the beginning it has accepted to promote dialogue, such as in the Saint Petersburg International Legal Forum in 2018 and 2019<sup>292</sup>. Russia is collecting information on the implementation of the judgment on the field, although it has currently stopped this activity due to the impossibility of cross-border activity during the COVID-19 crisis<sup>293</sup>. The NGOs on the field, however, have complained that Russia's apparent willingness to find a solution has not been translated into specific actions<sup>294</sup>, even suggesting that the

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<sup>292</sup> Council of Europe: Secretariat of the Committee of Ministers, Communication from the authorities (07/11/2019) in the case of CATAN AND OTHERS v. Russian Federation (Application No. 43370/04), DH-DD(2019)1299 , 1362<sup>nd</sup> meeting, 7 November 2019

<sup>293</sup> Council of Europe: Secretariat of the Committee of Ministers, Communication from the authorities (20/05/2020) in the Catan and others group of cases v. Russian Federation (Application No. 43370/04) DH-DD(2020)447 , 1377<sup>th</sup> meeting, 20 May 2020

<sup>294</sup> Council of Europe: Secretariat of the Committee of Ministers, Communication from a NGO (31/10/2019) in the case of CATAN AND OTHERS v. Russian Federation (Application No. 43370/04), DH-DD(2019)1365, 1362<sup>nd</sup> meeting, 20 November 2019

international conferences give a cover of dialogue to the real intention of not paying<sup>295</sup>. It is difficult to assess those statements with the information available, but the communications show no progress in execution over the last eight years.

*B) General policies regarding Transnistria and the ECtHR*

Russia is in permanent disagreement with the European Court of Human Rights on the very issue of its jurisdiction over Transnistria. Russian officers have explicitly stated that the Court's decisions have political reasons and they are not willing to enforce them unless recognised by Russian courts:

This is our commitment to the European Convention on Human Rights. Until now, we are paying money even in the cases, where we categorically disagree with the decisions taken, such as the notorious case of I.I. Iasko. However, when Russia is required to take practical actions, referring to the same Transnistria, where we allegedly exercise effective control, we simply ignore it as an unacceptable approach.

The fact that politicized decisions are multiplying, including with regard to Russia, is alarming. But, I repeat, we will study this case in detail and then make a decision. We need it ourselves and this is the other side of the coin. We need to make order in the enforcement of absolutely legitimate and rightful decisions, when our citizens, having won the case in the Russian court and having passed through all the national instances that confirm that the state must pay the person, do not receive this money in the end. They delay the payment. Almost half of the cases in the European Court are of this kind. We need to put in order and ensure payment of compensations to our citizens on the decisions of Russian courts<sup>296</sup>.

These statements not only reflect Russia's lack of recognition of jurisdiction in Transnistria, but reflect the broader context to Russia's problematic relation to the ECtHR. In 2015 Russia amended its Federal Law on the Constitutional Court to allow it to decide whether the decisions of inter-State Human Rights protection bodies could be implemented in accordance with the Russian Constitution<sup>297</sup>.

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<sup>295</sup> Council of Europe: Secretariat of the Committee of Ministers, Communication from a NGO (31/10/2019) in the case of CATAN AND OTHERS v. Russian Federation (Application No. 43370/04), DH-DD(2019)204, 1240<sup>th</sup> meeting, 27 February 2019

<sup>296</sup> Foreign Affairs Minister Lavrov as quoted and translated in Apostol, p. 22.

<sup>297</sup> Федеральный конституционный закон N 1-ФКЗ "О Конституционном Суде Российской Федерации" [Federal Constitutional Law No. 1-FKZ "On the Constitutional Court of the Russian Federation"], passed by the Russian Duma on 21 July 1994, as amended on 29 July 2018, art. 104.4.

In conclusion, while the Transnistria judgments have an impact on the Russian Federation, it does not amount to compliance and it is limited to the concessions obtained after years of diplomatic pressure on very specific and politically sensitive cases (namely, the payment in *Ilaşcu* and *Ivanțoc* and the role as mediators in *Catan*) and their jurisdiction over the JCC, which they accept. In every other case Russia is not complying with the Convention and is not executing any measure. The information on its general relation to the Court and the MRT shows that not only it is not interested in compliance at the moment, but there is little that can be done from Strasbourg to foster its collaboration and it is not in the interest of Russia to modify this situation.

#### 6.4. The MRT

Information about the actions of the MRT agents on specific sectors is scarce and lacks transparency, but the general situation reflected in the judgments over sixteen years, the declarations of the applicants and NGOs, and other details create a picture of a regime strongly hostile to the ECtHR.

The first mention of the Court, chronologically, is the moment in which the French parliamentarian Josette Durrieux visited Ilie Ilaşcu in prison and suggested him to lodge a complaint before the Court of Strasbourg<sup>298</sup>. Upon learning of his decision, the guardians proceeded to beat him<sup>299</sup>. So the MRT is not indifferent to the Court – it shows an active rejection of the Convention. However, international pressure managed to bend this initial attitude: the moratorium of death penalty signed by Smirnov while *Ilaşcu* was pending made explicit reference to Protocol 6 ECHR, and it has been directly attributed to the proceedings<sup>300</sup>. One of the disputed facts about this case is that Mr. Ilaşcu assured that on the moment of his release it was communicated to him that his freedom was subject to the condition of not returning, that is, he might be jailed or even executed if he dared to enter Transnistria again<sup>301</sup>. Furthermore, the Minister of Foreign Affairs of the MRT issued a statement criticising the ECtHR for deciding *Ilaşcu* superficially<sup>302</sup> –

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<sup>298</sup> ECtHR, *Ilaşcu* (annex), para. 20

<sup>299</sup> ECtHR, *Ilaşcu*, para. 270

<sup>300</sup> Mole, p. 76.

<sup>301</sup> ECtHR, *Ilaşcu*, para. 281.

<sup>302</sup> ECtHR, *Ivanțoc*, para. 16.

although in the end they would also free the rest of the applicants. This first case describes the impact of the ECtHR in Transnistria: there is no intention of complying but it is a strong element to be used by other actors through diplomacy to put pressure on the regime, obtaining partial results.

I use the word partial because it is evident that the success in these cases owes to their political nature. When the imprisoned applicants were journalists and the international community intervened, they were also freed<sup>303</sup>. The school cases also reached international attention and although they could not be solved the 'President' of the MRT has discussed them with the Moldovan Prime Minister<sup>304</sup>. The applicants complained in 2015 that the system of fines was still in force<sup>305</sup> and in 2016 that the intimidation continued and the dissuasive measures continued<sup>306</sup>. The OSCE stated in its annual report that the number of pupils in Moldovan schools has increased in 2019 for the first time in years<sup>307</sup>, but it has not offered specific reasons so it is difficult to know if there has been any change in the dynamics. According to Promo-Lex, the harassment continues<sup>308</sup>.

In non-political cases, there are no signs of improvement. For example, regarding the 'car cases', the OSCE reports the use of Moldovan neutral-design car plates to allow the inhabitants of the MRT to travel abroad<sup>309</sup>, but we must point out that the judgments concerned the opposite situation, the use of Moldovan car plates within the MRT. Time

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<sup>303</sup> ECtHR, *Vardanean*

<sup>304</sup> Council of Europe: Secretariat of the Committee of Ministers, Communication from the authorities (27/02/2017) - Non Paper on the situation of the Latin- script schools from the Transnistrian region administered by the Government of the Republic of Moldova – Case Catan and others v. Russian Federation and Republic of Moldova (Application No. 43370/04), DH-DD(2017)236, 1280<sup>th</sup> meeting, 1 March 2017

<sup>305</sup> Council of Europe: Secretariat of the Committee of Ministers, Communication from the applicants' representatives (14/09/2015) in the case of Catan and others against Russian Federation (Application No. 43370/04) - Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, DH-DD(2015)936, 1236<sup>th</sup> meeting, 15 September 2015

<sup>306</sup> Council of Europe: Secretariat of the Committee of Ministers, Communication from the applicants' representative (03/03/2016) in the case of Catan and Others against Russian Federation (Application No. 43370/04) - Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, DH-DD(2016)250, 1250<sup>th</sup> meeting, 2 March 2016

<sup>307</sup> OSCE, Annual Report 2019, 24 March 2020, p. 68.

[https://www.osce.org/files/f/documents/0/9/449104\\_0.pdf](https://www.osce.org/files/f/documents/0/9/449104_0.pdf) (accessed 10 June 2020)

<sup>308</sup> Promo-Lex, 2020 (a), p. 10.

<sup>309</sup> OSCE, 2020, p. 68

will tell whether the normalization of the use of MRT car plates will compel the authorities of the regime to stop violating the rights of drivers that use the Moldovan car plates. As for the land owners of the 'road cases', the MRT continued blocking access in March 2020<sup>310</sup>, during the pandemic. Regarding the arbitrary arrests and convictions, in 2019 only 8 out of 1467 people were found innocent<sup>311</sup>.

The most evident sign of the disruption of the ECtHR's activity by the MRT is the fact that the Chişinău NGO Promo-Lex, who has represented the applicants in Strasbourg in around half of the cases, has been outlawed and a criminal investigation has been opened on all its representatives with the clear intent of preventing them from accessing the applicants<sup>312</sup>. Actually, one of the communications from last year is about Mr. Manole and Mr. Postica, Promo-Lex lawyers, who supposedly suffered an arbitrary arrest by the Russian peacekeepers<sup>313</sup>.

The conclusion is that the MRT is not only unwilling to execute the judgments, but in an active situation of non-compliance.

## **6.5. The state of execution, compliance and impact of the judgments**

Returning to the original classification, the effects of the ECtHR are the following:

-All judgments but three remain unexecuted. The applicants have received their payments from Moldova but not from Russia (except in the first group, *Ilaşcu*). The Republic of Moldova has also taken alternative measures to substitute the execution processes that are not feasible, such a favourable treatment to individuals that are subject to sanctions of the MRT and funding of the schools that are victims of harassment. Russia accepts that there are human rights violations in Transnistria but denies having any authority to execute the judgments. The MRT does not collaborate in execution.

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<sup>310</sup> Promo-Lex: 'Farmers from Dubasari District – Double Victims of Transnistrians and of the Pandemic', 26 March 2020, <https://promolex.md/17193-fermierii-din-raionul-dubasari-duble-victime-ale-transnistrenilor-si-ale-pandemiei/?lang=en> (accessed 8 July 2020)

<sup>311</sup> Promo-Lex, 2020 (a), p. 19.

<sup>312</sup> Council of Europe: Secretariat of the Committee of Ministers, Communication from the applicants (14/02/2020) in the Catan and Others group of cases v. Russian Federation, in the Mozer group of cases v. Russian Federation and in 15 other similar cases v. Russian Federation [DH-DD(2020)369] 1377<sup>th</sup> meeting (June 2020) (DH)

<sup>313</sup> ECtHR, *Manole and Postica*

-The executed judgments do not create a situation of compliance, as similar cases continue to arise almost thirty years later. Moldova has taken measures to align its legislation with the requirements of the Convention (particularly when it comes to deciding which forms of collaboration with the MRT are acceptable and which not). Russia continues to operate on the territory supporting and sustaining the status quo, and the MRT openly opposes the Court, although it has shown a very limited sensibility to some other human rights mechanisms, particularly a UN expert. There have been no significant improvements in human rights compliance over the last sixteen years. The few changes can be directly linked to the political situation of Transnistria and are not causally linked to the Court.

-The impact of the judgments beyond execution and compliance is almost non-existent due to the lack of a civil society that can discuss them or appropriate channels of communication to introduce them. However, they guide the Moldovan authorities (and, to a much lesser extent, basically reduced to the school cases, the Russian too) to decide which specific topics must be discussed and negotiated with the MRT authorities.

Only the actions that depend on Moldova are effective. As for Russia and the MRT itself, they do not feel involved in the proceedings. Given that in every debate the OSCE has held the same positions as the Court with much more direct access to the MRT, the Transnistria saga as a whole is almost irrelevant in practice.

## **7. GENERAL CONCLUSIONS AND RECOMMENDATIONS ON EXECUTION, COMPLIANCE AND IMPACT OF THE JUDGMENTS**

The judgments and decisions of the ECtHR on Transnistria have not managed to stop violations, redress victims or guide the authorities to prevent further violations. Moldova keeps a positive attitude of collaboration, but does not have the power to operate in Transnistria. Russia denies its responsibility, and its position is stable and part of a larger disagreement between Moscow and Strasbourg. However, the position of the MRT might vary. It is important to notice that the Court does have an impact on the regime. The leadership is not indifferent; it has tried to prevent access to the Court and criticises the

judgments. Any modification of the strategy of the Court shall be aimed at modifying the perception of the MRT and present compliance as something desirable or useful.

A possible recommendation to the Court is to open paths of dialogue with the MRT. It is naïve to expect execution of the judgments in the current circumstances. The Court should modify its approach to create opportunities of raising the general level of compliance with the Convention (without renouncing to identifying specific violations). Some points that could help an understanding with the MRT are the following:-The Court could specify the exact obligations of Moldova. This would help the Republic in directing its policies towards compliance and reduce the impression of lenient treatment from the other parties.

-The judgments could apply the Namibia exception to the MRT. The current judgments have shown that the strategy of absolute rejection does not affect the regime. A more nuanced approach could help all actors in finding specific measures to negotiate with the MRT leadership.

-The Court could be more diligent in asking for or accepting information on the exact nature of the legal system of the MRT to reference the legislation explicitly and not indirectly.

-The Court could classify the violations in Transnistria thematically and issue specific judgments for each specific problem, instead of relying on a non-reproducible leading case for the whole Transnistria saga (currently *Mozer*). This would lead to a deeper discussion of each problem and possibly to separate grouping by the Department for the Execution of Judgments. Then each problem would be dealt with separately and easier situations would not be compromised by the larger political cases.

-The Court could invite the MRT to participate in the proceedings, either as a third party or as part of the Moldovan delegation, to engage it in constructive dialogue without jeopardising the stability of the negotiations by recognising its statehood. While this would probably not convince the MRT of modifying their system completely, it would force them to confront their legal system with the Convention.

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### **Abstract:**

For the past sixteen years, the European Court of Human Rights has been issuing judgments on the actions of the self-proclaimed authority of Transnistria, finding the Republic of Moldova and the Russian Federation in violation. However, the local Transnistrian authorities do not recognise the authority of the Court and have been actively trying to hamper the access of Transnistrians to Strasbourg. Most judgments

remain unexecuted and there is no progress in compliance with the European Convention on Human Rights.

The analysis of the fifty cases of the Transnistria saga reveals certain thematic patterns and that the case-law of the Court on Transnistria is not completely consistent. It is suggested that the Court should use the Namibia exception to analyse in depth the Transnistrian system and check whether it is partially compatible with the European Convention of Human Rights. Direct interaction between Transnistria and the Court would also result in addressing the systemic problems of the breakaway republic, to improve the life conditions of its inhabitants.

**Key words:** Transnistria, ECtHR, execution, compliance, jurisdiction

### **Kurzbeschreibung:**

Seit sechzehn Jahren hat der Europäische Gerichtshof für Menschenrechte über die selbsternannte Autorität von Transnistrien Urteile gefällt, in denen der Gerichtshof Rechtsverletzungen von der Republik Moldau und der Russischen Föderation festgestellt hat. Die örtlichen transnistrischen Behörden erkennen die Autorität des Gerichtshofs jedoch nicht an und haben aktiv versucht, den Zugang der Transnistrier zu Straßburg zu behindern. Die meisten Urteile werden nicht vollstreckt, und es gibt keine Fortschritte bei der Einhaltung der Europäischen Menschenrechtskonvention.

Die Analyse der fünfzig Fälle der Transnistrien-Saga zeigt einige thematische Muster und dass die Rechtsprechungen des Gerichtshofs für Transnistrien nicht vollständig konsistent sind. Es wird empfohlen, dass der Gerichtshof die 'Namibia exception' verwendet, um das transnistrische System eingehend zu analysieren und zu prüfen, ob es teilweise mit der Europäischen Menschenrechtskonvention vereinbar ist. Eine direkte Interaktion zwischen Transnistrien und dem Gerichtshof würde auch dazu führen die systemischen Probleme der abtrünnigen Republik anzugehen, um die Lebensbedingungen ihrer Bewohner zu verbessern.

**Schlüsselwörter:** Transnistrien, EGMR, Vollstreckung, Einhaltung, Zuständigkeit